



# California Regulatory Notice Register

REGISTER 2008, NO. 44-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

OCTOBER 31, 2008

## PROPOSED ACTION ON REGULATIONS

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

*Conflict of Interest Code — Notice File No. Z2008-1021-01* ..... 1913

STATE AGENCY: Department of Justice

MULTI-COUNTY: Sacramento Metropolitan Fire District  
 American River Fire Protection District  
 Yuba Community College District  
 Golden Gate Bridge Highway and Transportation District  
 California Fair Services Authority  
 Southern California Association of Governments  
 Capitol Valley Regional Service Authority for Freeways & Expressways

### TITLE 2. SECRETARY OF STATE

*Business Entity Names — Notice File No. Z2008-1010-02* ..... 1914

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

*Modified Point of Origin Inspection Areas — Notice File No. Z2008-1021-06* ..... 1917

### TITLE 8. DIVISION OF WORKERS' COMPENSATION

*Audit Regulations — Notice File No. Z2008-1020-01* ..... 1918

### TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

*High Voltage Electrical Safety Orders (HVESO) Group 2 — Notice File No. Z2008-1021-07* ..... 1932

### TITLE 14. STATE MINING AND GEOLOGY BOARD

*Vested Rights Hearing Procedure — Notice File No. Z2008-1021-05* ..... 1935

### TITLE 21. DEPARTMENT OF TRANSPORTATION

*Fire Apparatus Axle Weight Exemptions — Notice File No. Z2008-1021-02* ..... 1940

(Continued on next page)

***Time-  
Dated  
Material***

**PROPOSITION 65**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
*Proposition 65 Regulatory Update Project — Concept for Human and Plant Nutrients in Human Food* . . . . . 1942

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
*Proposition 65 Regulatory Update Project — Warnings for Exposures to Listed Chemicals in Foods* . . . . . 1943

**OAL REGULATORY DETERMINATIONS**

DEPARTMENT OF MENTAL HEALTH  
*Administrative Directive #485 and #763* . . . . . 1944

**DISAPPROVAL DECISIONS**

BUREAU OF BARBERING AND COSMETOLOGY . . . . . 1948

DEPARTMENT OF MOTOR VEHICLES . . . . . 1948

**SUMMARY OF REGULATORY ACTIONS**

Regulations filed with the Secretary of State . . . . . 1949

Sections Filed, May 21, 2008 to October 22, 2008 . . . . . 1953

---

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002–931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$302.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. “Periodicals Postage Paid in Saint Paul, MN.” **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.*

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

#### CONFLICT-OF-INTEREST CODES

##### AMENDMENT

STATE AGENCY: Department of Justice

MULTI-COUNTY: Sacramento Metropolitan Fire District/American River Fire Protection District  
Yuba Community College District  
Golden Gate Bridge Highway and Transportation District  
California Fair Services Authority  
Southern California Association of Governments  
Capitol Valley Regional Service Authority for Freeways & Expressways (SAFE)

A written comment period has been established commencing on **October 31, 2008**, and closing on **December 15, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention Sarah Olson, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **December 15, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

## CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Sarah Olson, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

## AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Sarah Olson, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

## TITLE 2. SECRETARY OF STATE

### Notice of Proposed Rulemaking

#### Title 2. Administration Division 7. Secretary of State Chapter 8.5. Business Entity Names

#### Proposal to Add 2 California Code of Regulations Sections 21000 through 21009 (Business Entity Names)

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

## PROPOSED REGULATORY ACTION

The Secretary of State proposes the following regulatory action: Add provisions of 2 California Code of Regulations sections 21000 through 21009 to further implement, interpret or make specific provisions of Corporations Code sections 201, 2106, 5122, 7122, 9122, 12302, 13409, 15612, 15901.08, 15909.05 and 17052.

## AUTHORITY AND REFERENCE

Authority cited: Corporations Code sections 110, 201, 2106, 5008, 5122, 7122, 9122, 12214, 12302, 13409, 15612, 15693, 15901.08, 15909.05, 17052 and 17452.

Reference cited: Corporations Code sections 110, 201, 2101, 2106, 5008, 5122, 6910, 7122, 8910, 9122, 12214, 12302, 13409, 15612, 15613, 15693, 15901.08, 15901.09, 15909.05, 17052, 17053 and 17452.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Secretary of State proposes to adopt Sections 21000 through 21009 in Title 2 of the California Code of Regulations, which would implement, interpret or make specific Corporations Code sections 201, 2106, 5122, 7122, 9122, 12302, 13409, 15612, 15901.08, 15909.05 and 17052. These sections concern the availability of business entity names for Corporations, Foreign Corporations, Limited Liability Companies, Foreign Limited Liability Companies, Limited Partnerships and Foreign Limited Partnerships.

These statutes require the Secretary of State to determine, prior to filing business entity documents, that a proposed business name is not the same as or too similar to the names of existing business entity names of record with the Secretary of State and that the business name is not misleading to the public. In the case of a limited partnership subject to the Uniform Limited Partnership Act of 2008, the Secretary of State is required to determine that the proposed name is distinguishable on the record. The purpose of the proposed regulations is to interpret these statutes and provide guidelines for the public to use when selecting business entity names on documents that are filed with the Secretary of State.

Specifically, the Secretary of State proposes to amend 2 California Code of Regulations in the following respects:

- 1) Add Section 21000 to provide some rules of general application regarding items such as the use of alphabetic characters, numbers, fonts and symbols.
- 2) Add Section 21001 to define terms that are used in the regulations.
- 3) Add Section 21002 to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to the names that are the same as an existing business entity name or that resemble an existing business entity name so closely as to tend to deceive.
- 4) Add Section 21003 to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to names that are substantially similar to an existing business entity name.

- 5) Add Section 21004 to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 15612(e) and 17052(c) and provide guidelines relating to the need for consent to use a name that is substantially similar to an existing business entity name.
- 6) Add Section 21005 to interpret Corporations Code sections 201(b), 5122(b), 7122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to business entity names that are likely to mislead the public.
- 7) Add Section 21006 to interpret Corporations Code sections 201(c), 5122(c), 7122(d), 9122(c), 12302(c), 13409, 15613 and 17053 relating to reserving business entity names that may require consent prior to filing.
- 8) Add Section 21007 to interpret Corporations Code sections 201, 5122, 7122, 9122, 12302, 15612, 15901.8, 15909.05 and 17052 and provide additional guidelines relating to proposed business entity names that are the same as an existing business entity name or that resemble an existing business entity name so closely as to tend to deceive.
- 9) Add Section 21008 to interpret Corporations Code sections 201, 5122, 7122, 9122, 12302, 15612, 15901.08 and 17052 and provide factors not considered when determining if a proposed business entity name is the same as an existing business entity name, resembles an existing business entity name so closely as to tend to deceive, or is distinguishable on the record.
- 10) Add Section 21009 to interpret Corporations Code section 15901.08 and to provide guidelines relating to the proposed names of limited partnerships governed by the Uniform Limited Partnership Act of 2008.

#### PUBLIC HEARING

The Secretary of State has not scheduled a public hearing on this proposed rulemaking. However, the Secretary of State will hold a hearing if it receives a written request for a public hearing from any interested person, or the interested person's authorized representative, no later than 15 days before the close of the written comment period. Any request for a public hearing should be sent within the time specified to the contact person indicated below.

#### WRITTEN COMMENT PERIOD

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on December 15, 2008. The Secretary of State will consider only comments received at the Secretary of State's office by that time. Submit comments to:

Todd Vlaanderen, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None beyond that budgeted or expected to be budgeted for the Secretary of State.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
7. **Cost impacts on a representative private person or businesses:** The Secretary of State anticipates negligible overall cost savings to private persons and businesses. These regulations will help persons and businesses better determine the availability of business entity names prior to filing their documents with the Secretary of State. This should result in fewer documents being rejected by the Secretary of State based on unavailable business entity names, which will save those individuals and businesses time and money.
8. **Adoption of these amendments will not:**
  - (A) create or eliminate jobs within California;
  - (B) create new businesses or eliminate existing businesses within California; or

(C) affect the expansion of businesses currently doing business within California, although it may facilitate the conducting of business by providing businesses guidelines regarding the availability of proposed business entity names.

9. **Significant effect on housing costs:** None.
10. **Effect on small business:** None. The proposed amendments do not impose any mandatory fees on small businesses or require that any forms or reports be prepared or filed by any business. However, these amendments, if adopted, will help small businesses and other businesses to select business entity names with more certainty that the Secretary of State will accept the names.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Secretary of State must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Todd Vlaanderen, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

The backup contact person for these inquiries is:

Edward S. Maxwell, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Todd Vlaanderen at the address listed above.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the regulations as proposed, and the Initial Statement of Reasons. The Initial Statement of Reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's website at <http://www.ss.ca.gov/business> and may also be obtained from the contact person indicated above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Secretary of State may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the Secretary of State makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person indicated above. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained from the contact person indicated above.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the proposed regulations in underline and strikeout can be accessed through the Secretary of State's website at <http://www.ss.ca.gov/business>. A copy of the Final Statement of Reasons will be posted on the website once the statement has been prepared.

### TITLE 3. FOOD AND AGRICULTURE

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **beginning October 31, 2008 and ending at 5:00 p.m. on December 15, 2008**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 20171 and 21111, Food and Agricultural Code, and to implement, interpret or make specific sections 20017, 20021 and 21111, of said Code, the Department is considering amending section 850 of Article 1, Chapter 3, Division 2, of Title 3 of the California Code of Regulations, as follows:

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, section 21051 of the Food and Agricultural Code requires inspection of all cattle sold, transferred, moved out of state, moved out of a modified point-of-inspection area, moved into a registered feedlot, public auction yard or sales yard, public or private sales market, out of a full point-of-origin inspection area, or from areas designated as quarantine, restricted, or isolated areas, with limited exceptions.

Sections 20017, 20021, 21111 and 21112 of the Food and Agricultural Code specify the requirements and procedures for the modified point-of-origin inspection areas for the movement of cattle.

To implement the above sections of law, the Department has in place regulations under Articles 1-4 of

Chapter 3, Division 2, of Title 3 of the California Code of Regulations.

This proposal pertains to section 850 of Article 1, Chapter 3, Division 2, of Title 3 of the California Code of Regulations, to amend the modified point-of-origin inspection area for Modoc County and parts of Lassen County, as specified.

#### FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department has made an initial determination that this proposed regulatory action will not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses.

#### CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing (if a hearing is requested from the public), or during the public comment period.

**INITIAL STATEMENT OF REASONS**

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing (if a hearing is requested) or during the public comment period upon request from the Department of Food and Agriculture, 1220 N Street, Room A-116, Sacramento, California 95814.

**AVAILABILITY AND LOCATION OF  
THE FINAL STATEMENT OF REASONS  
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below.

**CONTACT PERSONS**

Written comments and inquiries concerning the proposed regulations are to be addressed to the following:

Name: Greg Lawley, Chief  
Address: Department of Food and  
Agriculture  
Bureau of Livestock Identification  
1220 N Street, Room A-130  
Sacramento, CA 95814  
Telephone No.: (916) 654-0889  
Fax No.: (916) 653-5190  
E-mail address: [GLawley@cdfa.ca.gov](mailto:GLawley@cdfa.ca.gov)

The backup contact person is as follows:

Name: Nancy Grillo, Associate Analyst  
Address: Department of Food and  
Agriculture  
1220 N Street, Room A-116  
Sacramento, CA 95814  
Telephone No.: (916) 651-7280  
Fax No.: (916) 653-4249  
E-mail address: [NGrillo@cdfa.ca.gov](mailto:NGrillo@cdfa.ca.gov)

Website Access:

Materials regarding this proposal can be found at:  
[www.cdfa.ca.gov/ahfss/regulations.html](http://www.cdfa.ca.gov/ahfss/regulations.html).

**TITLE 8. DIVISION OF WORKERS'  
COMPENSATION**

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION**

**NOTICE OF PROPOSED RULEMAKING**

**Workers' Compensation — Audit Regulations**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code sections 59, 129, 129.5, 133, and 5307.3, proposes to adopt regulations contained in Article 1 of Chapter 4.5, Subchapter 1.5, Division 1, of California Code of Regulations, title 8, sections 10100.2 through 10115.2, relating to Audit Regulations.

**PROPOSED REGULATORY ACTION**

The Division of Workers' Compensation, proposes to adopt Article 1 of Chapter 4.5, Subchapter 1.5, Division 1, of California Code of Regulations, title 8, commencing with Section 10100.2:

Amended section 10100.2	Definitions.
Amended section 10101.1	Claim File—Contents.
Amended section 10103.2	Claim Log—Contents and Maintenance.
Amended section 10104	Annual Report of Inventory.
Amended section 10105	Auditing, Discretion of the Administrative Director.
Amended section 10106.1	Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection.
Amended section 10106.5	Civil Penalty Investigation.
Amended section 10107.1	Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.
Amended section 10108	Audit Violations—General Rules.

Amended section 10109	Duty to Conduct Investigation; Duty of Good Faith.
Amended section 10111.1	Schedule of Administrative Penalties for Injuries on or After January 1, 1994.
Amended section 10111.2	Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.
Amended section 10113.4	Written Statement and Supporting Evidence.
Amended section 10113.5	Prehearing Conference; Subject Matter; Prehearing Order.
Amended section 10114.2	Affidavits.
Amended section 10115	Appeal of Notice of Compensation Due.
Amended section 10115.1	Appeal of Notice of Penalty Assessment—Filing and Contents.
Amended section 10115.2	Appeal of Notice of Penalty Assessment; Conference Process and Delegation of Authority; Notice of Findings, Service.

#### TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date: December 15, 2008**

**Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business**

**Place: Elihu Harris State Office Building —  
Auditorium  
1515 Clay Street  
Oakland, California 94612**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711

or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 p.m., on December 15, 2008. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 p.m. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m., on December 15, 2008.**

#### AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 129, 129.5, 133, and 5307.3.

Reference is to Labor Code sections 124, 129, 129.5, 138.6, 138.7, 4061, 4453, 4454, 4550, 4600, 4603.2, 4610, 4621, 4622, 4625, 4636 through 4638, 4639, 4641, 4642, 4650, 4658.5, 4658.6, 4951, 4701 through 4703.5, 4706, 4706.5, 5401, 5401.6, 5402, 5800 and

5814; Unemployment Insurance Code section 2629.1 (e) and (f).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Labor Code section 129 requires the Administrative Director to conduct audits of insurers, self-insured employers, and third-party administrators to determine if they have met their obligations under the California workers' compensation laws. Audits consist of: a profile audit review (PAR), which every claims administrator is subject to once every five years; a full compliance audit (FCA), conducted for every claims administrator failing to meet express PAR performance standards and subsequently (within two years) for claims administrators failing to meet express FCA performance standards; and a target PAR or FCA, conducted for claims administrators for which reliable information has been received (for example through benefit notices or from Information and Assistance Officers) indicating that the claims administrator is failing to meet its obligations under the California workers' compensations laws (specifically, obligations under Division 1 or Division 4 of the Labor Code, or promulgated regulations of the Administrative Director). If, as a result of a PAR or FCA, the Administrative Director, through the Division of Workers' Compensation's (DWC) Audit Unit, determines that any compensation, interest, or penalty is due and unpaid to an employee or dependent, the Administrative Director must issue a notice of assessment to the audited claims administrator detailing the owed amount and ordering payment to the entitled employee or dependent. If the owed amount is not paid within 30 days after service of the notice of assessment, the audited claims administrator is liable for reasonable attorney's fees incurred to obtain the amounts due.

Labor Code section 129.5(a) confers authority on the Administrative Director to assess administrative penalties against a claims administrator for: failing to comply with a notice of assessment issued under Labor Code section 129(c) within 15 days of receipt; failing to pay an undisputed indemnity payment or the cost of medical treatment; imposing a charge for an approved vocational rehabilitation plan; or failing to comply with a promulgated rule or regulation. Labor Code section 129.5(b) provides that the Administrative Director shall establish a schedule of violations and the amount of administrative penalty to be imposed for each violation, from \$100 to \$5,000 based on severity of the violation. Imposed administrative penalties must take into consideration the gravity of the violation, the good faith of the claims administrator, the history of previous violations, the frequency of the violations, whether the

claims administrator has met the PAR or FCA performance standards, and the size of the claims administrator's audited location. Labor Code section 129.5(c) provides that claims administrators who, following an audit, meet or exceed the PAR or FCA performance standards shall only be required to pay any compensation due and penalties due under Labor Code section 4650(d) (the self-imposed 10% increase for late indemnity payments). Claims administrators who fail to meet the FCA performance standards are subject to a FCA failure penalty schedule.

Further, Labor Code section 129.5(e) provides that the Administrative Director may assess a civil penalty of up to \$100,000 upon finding, after hearing, that an employer, insurer, or third party administrator knowingly committed, or performed with sufficient frequency so as to indicate a general business practice, any of the following: (1) induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation; (2) refused to comply with known and legally indisputable compensation obligations; (3) discharged or administered compensation obligations in a dishonest manner; or (4) discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer. Upon a second civil penalty, the Administrative Director is required to refer the claims administrator to the Insurance Commissioner or the Director of the Department of Industrial Relations for a determination as to whether the claims administrator's certificate of authority, certificate of consent to self insure, or certificate of consent to administer claims of self-insured employer (as may be applicable) should be revoked.

These proposed regulations implement, interpret, and make specific these sections of the Labor Code as follows:

### 1. Section 10100.2 — Definitions

This section defines key terms used in these regulations to ensure that the meaning, as used in the regulations, will be clear to the public. Non-substantive citation changes are made to the section for consistency.

Section 10100.2(a) amends the definition of "adjusting location" to provide that for auditing purposes, any separate office or location whose staff includes personnel assigned supervisory responsibility over claims administration may be considered a single adjusting location.

Section 10100.2(b) sets forth the definition of "additional claim file." The term is defined as a claim file selected for audit in addition to the initial random sample of claims selected. An additional claim file may be a companion claim file, a complaint claim file, a file se-

lected for audit because it was incorrectly designated on the claim log, or a claim file chosen based on criteria relevant to a target audit but for which no specific complaint has been received.

Section 10100.2(g) sets forth the definition of “carve-out program.” The term is defined as either an alternative dispute resolution system established for employees and employers engaged in construction (or other enumerated activities), pursuant to Labor Code section 3201.5, or an alternative dispute resolution system established for other industries pursuant to Labor Code section 3201.7.

Section 10100.2(m) sets forth the definition of “companion claim file.” The term is defined as claim file selected for audit because it is related to a claim file selected for a random or target audit, in that claims were filed by the same injured worker and the Audit Unit cannot ascertain the extent to which benefits have been paid on the initial claim selected for audit without auditing the related claim file.

Section 10100.2(n) amends the definition of “compensation” to include supplemental job displacement benefits. The definition is further amended by the addition of the word “treatment” to clarify that compensation includes medical treatment.

Section 10100.2(o) sets forth the definition of “complaint claim file.” The term is defined as a claim file selected for audit because the Audit Unit has received information alleging the existence of an improper claim handling practice of the kind which, if found, would be subject to the assessment of an administrative penalty, the issuance of a notice of compensation due, or the assessment of a civil penalty.

Section 10100.2(q) amends the definition of “denied claim” by providing that a claim may be deemed a denied claim even if medical treatment was provided and paid under Labor Code section 5402(c). This Labor Code section requires an employer to authorize and provide medical treatment within one working day after an employee files a workers’ compensation claim and to continue to provide such treatment until liability for the claim is accepted or denied.

Section 10100.2(s) sets forth the definition of “first payment of permanent disability indemnity.” The term is defined as the first payment of permanent disability indemnity or a resumed payment following a period when either no payment was required or a lawful notice was issued advising that the benefit was ending.

Section 10100.2(u) sets forth the definition of “first payment of vocational rehabilitation maintenance allowance.” The term is defined as the first payment of vocational rehabilitation maintenance allowance or a resumed payment following a period when either no payment was required or a lawful notice was issued advising that the benefit was ending.

Section 10100.2(v) sets forth the definition of “frequency.” The term is defined as the ratio of the number of claim files with one or more of a specific type of violation divided by the number of claim files with exposure for the same specific type of violation selected for audit at the adjusting location.

Section 10100.2(w) amends the definition of “general business practice” by limiting the definition to the purposes of Labor Code section 129.5(e).

Section 10100.2(x) amends the definition of “indemnity claim” to include the payment of a temporary partial disability indemnity or a vocational rehabilitation maintenance allowance.

Section 10100.2(y) sets forth the definition of “indemnity payment.” The term is defined as compensation for any of the following benefits: temporary disability indemnity, including temporary partial disability indemnity, or salary continuation in lieu of temporary disability indemnity, permanent disability indemnity, death benefits, or vocational rehabilitation maintenance allowance. An indemnity payment includes any increase made pursuant to Labor Code section 4650(d), and any interest pursuant to Labor Code section 5800.

Section 10100.2(cc) amends the definition of “knowingly committed” to provide that one must act with knowledge of the facts of the conduct subject to an investigation and/or audit under Labor Code sections 129 and 129.5. The subdivision is further amended by removing the presumption and providing that a corporation has knowledge of facts any employee receives while acting within the scope of his or her authority and has knowledge of information contained in its records and of the actions of its employees performed in the course of employment. The subdivision is further amended to provide that an employer or insurer has knowledge of information contained in the records of its third party administrator and of the actions of the employees of the third party administrator performed in the scope and course of employment.

Section 10100.2(dd) sets forth the definition of “lawful delay.” The term is defined as a delay permitted by law or regulation, and for which the claims administrator has given a proper and timely notice of delay when such a notice is required. Any other delay is an unlawful delay.

Section 10100.2(ee) sets forth the definition of “local management.” The term is defined as claims personnel, regardless of their job titles, who have supervisory authority at an adjusting location over claims administration.

Section 10100.2(ff) amends the definition of “medical only claim” to include work injury claims for which no indemnity benefits would reasonably be anticipated or expected to be paid.

Section 10100.2(gg) sets forth the definition of “non-transferable training voucher.” The term is defined as a document provided to an employee that allows the employee to enroll in an education-related training or skills enhancement. The document shall include all necessary information as set forth in Labor Code section 4658.5 and California Code of Regulations, title 8, Section 10133.50 et seq.

Section 10100.2(kk) sets for the definition of “performance standard.” The term is defined as criteria developed from historical audit findings data and used as a basis for judgment of quality, quantity, level, and grade to measure claim adjusting performance in the handling of the workers’ compensation benefit areas set forth in California Code of Regulations, title 8, Section 10107.1, subdivision (c)(3)(A). Standard rating factors to be applied will be calculated annually and based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years before the year preceding the current audit. Performance standards for profile audit reviews and full compliance audits will be published for audits conducted the following year.

Section 10100.2(ll) sets forth the definition of “random sample.” For the purpose of audit or investigation, a random sample is a selection of claim files selected for audit pursuant to California Code of Regulations, title 8, section 10107.1, subdivisions (c)(1), (d)(1) or (e)(1). A random sample may also include companion claim files, additional claim files, or complaint claim files.

Section 10100.2(mm) amends the definition of “record of payment” to include, as part of provision accounting for the payment of medical treatment, the number of the check providing payment for a medical bill, the date of the check, and the amount paid.

Section 10100.2(oo) sets forth the definition of “Supplemental Job Displacement Benefit.” The term is defined as an educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code section 4658.5 and California Code of Regulations, title 8, section 10133.50 et seq.

Section 10100.2(n) sets forth the definition of “Workers’ Compensation Information System (WCIS).” The term is defined as the workers’ compensation information system established pursuant to Labor Code sections 138.6 and 138.7.

## 2. Section 10101.1 — Claim File—Contents

This section sets forth the required contents of a claim file. A claim file must be maintained by a claims administrator for each work-injury claim. Non-substantive citation changes are made to the section for consistency.

Section 10101.1 is amended to provide that all open claim files shall be maintained at the adjusting location

responsible for administering the claim. Section 10101.1(c) is amended to provide that correspondence sent to the Division of Workers’ Compensation must be maintained in a claim file.

Section 10101.1(i) is amended to provide that supplemental job disability benefit notices, and forms related to the Qualified Medical Evaluation or Agreed Medical Evaluator process, must be maintained in a claim file.

Section 10101.1(k) is amended to provide that correspondence, whether stored on paper or in electronic form and including correspondence to or from any individual or entity, related to the provision, delay, or denial of benefits, must be included in a claim file.

Section 10101.1(l) is added to provide that notes, correspondence, and documentation, whether stored on paper or in electronic form and including correspondence to or from any individual or entity, related to any utilization review process conducted under Labor Code section 4610, must be included in a claim file.

Section 10101.1(m) is added to provide that notes, correspondence, and documentation, whether stored on paper or in electronic form and including correspondence to or from any individual or entity, related to a return to regular, modified, or alternative work as defined by Labor Code section 4658.1, must be included in a claim file.

Section 10101.1(n) is re-lettered and amended to provide that correspondence, and documentation, whether stored on paper or in electronic form and including correspondence to or from any individual or entity, evidencing the legal, factual, or medical basis for non-payment or delay in payment of compensation benefits or expenses, must be included in a claim file.

Section 10101.1(o) is re-lettered and amended to provide that notes and documentation, whether stored on paper or in electronic form and including correspondence to or from any individual or entity, describing telephone conversations relating to the claim which are of significance to claims handling, including the dates of calls, substance of calls, and identification of parties to the calls, must be included in a claim file.

Section 10101.1(p) is added to provide that for injuries reported on or after January 1, 2009, each claims administrator shall maintain a claim file for each indemnity and medical-only claim, including denied claims, and shall ensure that each file is complete and current for each claim. The section further provides that the contents of claim files may be in hard copy, in electronic form, or some combination of hard copy and electronic form. Files maintained in hard copy shall be in chronological order with the most recently dated documents on top, or subdivided into sections such as medical reports, benefit notices, correspondence, claim notes, and vocational rehabilitation. Files or portions of

files maintained in electronic form shall be easily retrievable.

### **3. Section 10103.2 — Claim Log—Contents and Maintenance**

This section sets forth the required contents of a claim log. A claims administrator must maintain an annual claim log listing all work-injury claims, open and closed.

Section 10103.2(b)(4) is amended to provide that a claim log, when indicating whether a claim is an indemnity or medical-only claim, must differentiate indemnity claims with indemnity payments from indemnity claims with no indemnity payments.

Section 10103.2(b)(7) is amended to provide that if a claim has been transferred from one adjusting location to another, the address of the new location must be identified on the initial adjusting location's claim log along with the date of transfer. Transferred claims must be listed on the claim log of the new adjusting location for the year in which the claim was initially reported, not for the year in which the claim was transferred. The claim log shall also indicate the address of the old adjusting location along with the date of transfer.

### **4. Section 10104 — Annual Report of Inventory**

This section mandates that every claims administrator must maintain and file an annual report of inventory for each adjusting location. Reports due on or after April 1, 2003 report, as of the preceding January 1, the numbers of indemnity, denied, and medical-only claims reported to the claims administrator during the preceding calendar year.

Section 10104(a) is amended to provide that the annual report of inventory for a public self insured employer must be based on a calendar year and not a fiscal year. The subdivision is further amended to provide that the annual report of inventory must differentiate between indemnity claims with indemnity payments and indemnity claims with no indemnity payments.

Section 10104(b) is added to provide that a claims administrator must give written notice to the Audit Unit within 45 days of relocating, opening a new adjusting location, closing an adjusting location, changing contact persons, changing the e-mail address, changing from TPA-administered to self-administered or from self-administered to TPA-administered, or changing from self-insured to insured.

Section 10104(c) is added to provide that adjusting locations that have no indemnity, denied, or medical-only claims reported during the preceding calendar year must file with the Administrative Director a statement indicating whether the location is actively adjusting workers' compensation claims. The statement, which

shall be filed annually by April 1, shall contain the name, address, and telephone number of the adjusting location and the name and title of the person responsible for audit coordination.

Section 10104(d)(1) is added to provide that a claims administrator's obligation to submit an Annual Report of Inventory is waived upon a determination by the Administrative Director that the claims administrator is in compliance with the electronic data reporting requirements of the Workers' Compensation Information System, as set forth in California Code of Regulations, title 8, section 9702.

Section 10104(d)(2) is added to provide that each claims administrator whose obligation to submit an Annual Report of Inventory is waived based on accurate reporting to the Workers' Compensation Information System shall maintain and file with the Administrative Director an Annual Report of Adjusting Locations. This report shall be filed annually by April 1 of each calendar year and shall report, as of the preceding December 31, each of the claims administrator's adjusting locations. The report shall include the name, street and mailing address, physical zip code, e-mail address, fax number, and telephone number for each adjusting location and the name, title, e-mail address, fax number and telephone number of the person responsible for audit coordination.

Section 10104(d)(3) is added to provide that a claims administrator shall notify the Administrative Director of any change in the information provided in the Annual Report of Adjusting Locations. A reportable change shall include the relocation of the claims administrator or the opening or closing of an adjusting location. The notification shall be made within 30 calendar days after the effective date of the change.

Section 10104(d) is added to provide that a waiver granted to a claims administrator based on accurate reporting to the Workers' Compensation Information System shall be rescinded if the total number of claims reported by the claims administrator to the Audit Unit in a claim log is not within one percent of the total number of claims electronically reported to the Workers' Compensation Information System for the same period of time as covered in the submitted claim log.

### **5. Section 10105 — Auditing, Discretion of the Administrative Director**

This section provides that the Administrative Director shall audit claims administrators' claim files and claim logs at such reasonable times as he/she deems necessary. The section is amended to provide that the Administrative Director's authority is found in either Labor Code section 129 or 129.5.

## **6. Section 10106.1. Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection**

This section sets forth the procedures for selecting an audit subject. All adjusting locations are subject to a routine audit once every five years. Target audits may be performed based on: an audit subject's prior audit results; decision or findings of the WCAB under Labor Code section 5814; credible complaints or other information indicating claims handling violations or violations subject to a civil penalty; information from the Workers' Compensation Information System; the audit subject's failure to produce a claim for the Audit Unit within 30 days of request, and the failure to pay or appeal a Notice of Compensation due issued by the Audit Unit. Non-substantive citation changes are made to the section for consistency.

Section 10106.1(c) is amended by deleting the existing introductory paragraph and replacing it with a new paragraph providing that Pursuant to Labor Code section 129(b)(2) and (b)(3), the Audit Unit shall conduct a profile review audit or full compliance audit of target audit subjects. The paragraph further provides that subdivision (c) will set forth the target audit criteria.

Section 10106.1(c)(1) is amended to provide that prior audit results pursuant to Labor Code section 129(b)(2) shall be used independently as factual information to support selection of a claims administrator for a return, target audit.

Section 10106.1(c)(1)(A) is amended to provide that an audit subject's final performance rating will be based on audit findings from all randomly selected indemnity claims, denied claims, and other claims as expressly identified in California Code of Regulations, title 8, section 10107.1(c)(1), (d)(1), and (e)(1).

Section 10106.1(c)(1)(B) is amended to provide that an audit subject's performance rating will be compared against the worst 10% of performance ratings for all audits conducted in the three calendar years before the year preceding the year in which the current audit was commenced.

Section 10106.1(c)(1)(C) is amended to delete the sentence: "The return target audit shall be conducted in addition to any penalties assessed as a result of the qualifying audit."

Section 10106.1(c)(2)(A) is amended to provide that the Division of Workers' Compensation will submit to the Audit Unit reports of Workers' Compensation Appeals Board (WCAB) cases involving Labor Code section 5814 violations.

Section 10106.1(c)(2)(B) is amended to delete the opening phrase "Approximately once per year".

Section 10106.1(c)(2)(D), providing that the Audit Unit shall send the audit subject selected for target audit a Notice of Audit in accordance with §10107.1(a), is deleted.

Section 10106.1(c)(3) is amended to provide that the Audit Unit may contact a claims administrator and request information necessary to determine the validity of a complaint. The subsequent phrase in the next sentence, "Approximately once per year," is deleted.

Section 10106.1(c)(3)(A) is re-lettered. The provision requiring the Audit Unit to send the audit subject selected for target audit a Notice of Audit in accordance with § 10107.1(a), is deleted.

Section 10106.1(c)(3)(B) is re-lettered. The provision requiring the Audit Unit to send the audit subject selected for target audit a Notice of Audit in accordance with § 10107.1(a), is deleted.

Section 10106.1(c)(5)(C) is added to provide that a target audit may be based on a claims administrator's failure to comply with the requirements and timelines of the Workers' Compensation Information System.

Section 10106.1(c)(5)(D) is added to provide that a target audit may be based on the assessment of or a stipulation to a civil penalty pursuant to Labor Code section 129.5(e).

Section 10106.1(d)(1) is added to provide that for target audits conducted in accordance with the target audit criteria, the Audit Unit shall send the audit subject selected for target audit a Notice of Audit in accordance with section 10107.1(a).

Section 10106.1(d)(2) is re-numbered and amended to provide that for target audits the Audit Unit may randomly select claims pursuant to section 10107.1 and/or target claims on the basis that the Audit Unit has received information alleging the existence of an improper claim handling practice, and for the purpose of determining whether that practice occurred in those files. Companion claim files or additional claim files may be included for audit with the selected files.

Section 10106.1(d)(3) is re-numbered and amended to provide that for all types of target audits the Audit Unit may audit only those parts of the claim file that pertain to the alleged unlawful claims handling practice.

## **7. Section 10106.5 — Civil Penalty Investigation**

This amended section authorizes the Audit Unit to conduct an investigation or audit under Labor Code sections 129 and 129.5 when it has information indicating the possible existence of claims handling practices which would be subject to an assessment as a civil penalty under Labor Code section 129.5(e). Non-substantive citation changes are made for consistency.

## 8. Section 10107.1 — Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure

This section sets forth the procedures for conducting Profile Audit Reviews (PAR) and Full Compliance Audits (FCA), which includes the noticing of audits and sampling methodologies for selecting claims files for audit. The section further sets forth the method for determining an audit subject's profile audit review performance rating; an audit subject whose rating fails to meet or exceed the worst 20% of performance ratings based on all final audit findings over the three calendar years before the year preceding the current audit will be subject to a FCA and administrative penalties for unpaid and late compensation. An audit subject whose rating following a FCA fails to meet or exceed the rating of the worst 10% of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit is subject to the full schedule of administrative penalties for all violations. Non-substantive citation changes are made to the section for consistency.

Section 10107.1(a) is amended to provide that only one copy of the requested claim log or logs may be provided within 14 days by the claims administrator when provided via electronic submission to the Audit Unit mailbox at [DWCAuditUnit@dir.ca.gov](mailto:DWCAuditUnit@dir.ca.gov).

Section 10107.1(b) is amended to provide that claims selected for audit that are administered at the home of a telecommuting adjuster must be presented for audit at a California office location of the administrator, at a California location of the self insured employer, an Audit Unit office, or a Workers' Compensation Appeals Board district office. Other arrangements may be made as agreed between the audit subject and the Audit Unit.

Section 10107.1(c) is amended to provide that claim samples randomly selected under this subdivision shall not include claims with a single indemnity payment that cannot be classified under the profile audit review performance standards set forth in subdivision (c)(3)(A) through (C)(3)(E).

Section 10107.1(c)(2) is amended to provide that in addition to the randomly selected indemnity claims, the Audit Unit may audit any claims for which it has received a complaint or information over the past three years that indicate a failure to pay indemnity. The section is also amended to provide that claims with complaints that are randomly selected will be audited as part of the random sample and included in the performance rating. This section is further amended to provide that complaints other than a failure to pay indemnity will be provided to the audit subject for review and corrective action, if warranted.

Section 10107(c)(3)(A)(i-a), regarding the calculation of an audit subject's profile audit review performance rating, is amended to specify that "the failure to pay indemnity" is that set forth in section 10111.2, subdivisions (a)(1), (a)(2), (a)(3), (a)(4), and (a)(10). Further the section is amended to delete the unnecessary phrase, "whether paid or not".

Section 10107(c)(3)(A)(1), regarding the calculation of an audit subject's profile audit review performance rating, is renumbered and amended to identify the regulatory sections involving the failure to pay indemnity — California Code of Regulations, title 8, section 10111.2, subdivisions (a)(1), (a)(2), (a)(3), (a)(4), and (a)(10) — and to delete the unnecessary phrase, "whether paid or not".

Section 10107(c)(3)(A)(2) is renumbered and amended to delete the unnecessary phrase, "whether paid or not".

Section 10107(c)(3)(A)(3) is renumbered and amended to provide that the severity rate will be calculated based on an average amount of unpaid indemnity per randomly selected audited claim for all audit subjects for the three calendar years before the year preceding the year in which the current was commenced.

Section 10107(c)(3)(B), regarding the calculation of an audit subject's profile audit review performance rating, is re-lettered and amended to identify the regulations establishing violations for the late first payment of temporary disability indemnity payments, and in cases involving salary continuation, identify the regulation establishing the violation for a failure to comply with the requirements for first notices advising the injured employee of the provision of salary continuation in lieu of first temporary disability payments (under proposed section 10111.2, subdivisions (b)(8)(B) and (b)(8)(C)). The section is further amended to provide that in calculating the factor, the number of cases with violations will be divided by the number of randomly selected claims in which temporary disability payments or first notices advising the injured employee of the provision of salary continuation in lieu of first temporary disability notices were issued. The section is further amended to provide that in any claim involving the payment of both salary continuation in lieu of first temporary disability payments and temporary disability payments, each benefit type paid will be considered in the calculation.

Section 10107(c)(3)(C), regarding the calculation of an audit subject's profile audit review performance rating, is re-lettered and amended to specify that the late first payment of permanent disability indemnity, vocational rehabilitation maintenance allowance, and death

benefits is that pursuant to section 10111.2, subdivisions (a)(6), (a)(7), (a)(8), and (a)(10).

Section 10107(c)(3)(D), regarding the calculation of an audit subject's profile audit review performance rating, is re-lettered and amended to specify that the late subsequent indemnity payments are those pursuant to section 10111.2, subdivisions (a)(8), (a)(9), and (a)(10).

Section 10107(c)(3)(E), regarding the calculation of an audit subject's profile audit review performance rating, is re-lettered and amended to provide that the failure to comply with the requirements for notices advising injured workers of potential eligibility for vocational rehabilitation applies to injured workers with injuries prior to January 1, 2004; the requirements for notices advising injured workers of the right to the supplemental job displacement benefits applies to injured workers with injuries on or after January 1, 2004. The section is further amended to provide that the notice factor will be determined by dividing the numbers of randomly selected claims with violations involving the failure to comply with the applicable requirement to issue the notices by the numbers of randomly selected claims with the requirement to issue the notices.

Section 10107(c)(4) is re-numbered and amended to provide that the Audit Unit will issue Notices of Compensation Due but will assess no administrative penalties if the audit subject's profile audit review performance rating meets or exceeds the worst 20% of performance ratings for all final audit reports issued for audits commenced in the three calendar years before the year preceding the year in which the current audit was commenced.

Section 10107(c)(5) is renumbered and amended to provide that the Audit Unit will conduct a Full Compliance Audit by randomly selecting and auditing an additional sample of indemnity claims under subdivision (d) if audit subject's profile audit review performance rating fails to meet or exceed the rating of the worst 20% of performance ratings for all final audit reports issued for audits commenced in the three calendar years before the year preceding the year in which the current audit was commenced. The section is further amended to provide that the Audit Unit will complete the FCA unless the audit subject, within two working days of the receipt of the rating, demonstrates that the factual basis for the Audit Unit's calculation of the profile audit review performance rating is incorrect.

Section 10107(d)(2) is amended to provide that in addition to the randomly selected indemnity claims, the Audit Unit may audit any claims for which it has received a complaint or information over the past three years that indicate a failure to pay indemnity or late-paid indemnity. The subdivision is further amended to provide that complaints other than a failure to pay indemnity or late-paid indemnity will be provided to the

audit subject for review and corrective action, if warranted.

Section 10107(d)(3)(B) is amended to provide that the Audit Unit will issue Notices of Compensation Due and will assess administrative penalties only for violations involving unpaid and late paid compensation, if the audit subject's full compliance audit performance rating meets or exceeds the worst 10% of performance ratings for all final audit reports issued for audits commenced in the three calendar years before the year preceding the year in which the current audit was commenced.

Section 10107(e) is amended to provide that the Audit Unit will audit all claims selected for audit, in addition to a sample of denied claims, for all violations if audit subject's full compliance audit performance rating fails to meet or exceed the rating of the worst 10% of performance ratings for all final audit reports issued for audits commenced in the three calendar years before the year preceding the year in which the current audit was commenced. The subdivision is further amended to provide that notification of the Audit Unit's findings from the full compliance audit, the calculation of the full compliance audit performance rating, and intent to audit a sample of denied claims and assess penalties pursuant to Labor Code section 129.5(c)(3), will be provided to the audit subject in time for the timely filing of an objection. The subdivision is further amended to provide that the Audit Unit will complete the FCA unless the audit subject demonstrates either within two working days of the receipt of the rating, or at the meet and confer audit review conference, that it met or exceeded the FCA performance standard.

Section 10107(e)(2) is amended to provide that, in addition to the random samples of indemnity and denied claim, the Audit Unit may select for audit all claims, including their companion claims, for which complaints or information have been received over the past three years indicating the possible existence of any claims handling violation.

Section 10107(f) is amended to provide that if any additional requested documentation is not provided within thirty days of receipt of the report, additional audit penalties may be assessed under section 10111.2(b)(23).

Section 10107(h) is amended to provide that claim files selected for audit will include but not be limited to the required contents of California Code of Regulations, title 8, section 10101.1. The section is further amended to provide that if a claim file is maintained in an electronic or other non-paper storage medium, the claims administrator shall provide, at the Audit Unit's discretion, either direct computer access to the files or paper copies of the claim files. The section is also amended to provide that if a claim file selected for audit

is transferred to a different adjusting location after the issuance of the Notice of Audit Commencement the file shall be produced within five working days following the request.

Section 10107(j) is amended to provide that if the Audit Unit determines that the workspace provided by the audit subject is not adequate, safe and healthful, and allows a reasonable degree of privacy, the Audit Unit may require the audit subject to deliver the files to another California office location of the audit subject, an Audit Unit office, or a Workers' Compensation Appeals Board district office, for completion of the audit. Other arrangements may be made as agreed between the audit subject and the Audit Unit.

Section 10107(m) is amended to provide that the audit subject shall provide any requested documentation or other information within ten days from the Audit Unit's request, unless the Audit Unit extends the time for good cause.

## **9. Section 10108 — Audit Violations—General Rules**

This section sets forth the general rules that apply to audits under Labor Code sections 129 and 129.5. Non-substantive citation changes are made to the section for consistency.

Section 10108(c) is amended and subdivided. Amended Section 10108(c)(1) is added to provide that a claims administrator will be accountable for a failure to perform a required act even though the failure was remedied prior to the receipt of the Notice of Audit Commencement, when the claims administrator was notified that the claim was selected for audit. The subdivision restates that the penalty for an unlawful delay of more than 30 days in performing an act is the same as the penalty for not performing the act. The section further provides that the penalty assessed under this subdivision will be mitigated for good faith because the act, though late, was eventually performed.

Section 10108(c)(2) is added to provide that a claims administrator will be accountable for a failure to perform a required act even though the failure was remedied only after receipt of the Notice of Audit Commencement. The subdivision restates that in cases where there is an unlawful delay of more than 30 days in performing an act and the act was performed only after the audit subject was notified that the claim was selected for audit, violations will be calculated as though there was a failure to perform the act rather than late performance of the act. The subdivision further provides that there will be no mitigation for good faith if the act was performed after notification to the audit subject that the claim was selected for audit. Finally, the provision describing a "lawful delay" is deleted.

Section 10108(d) is amended to provide that penalties shall be issued, regardless of whether a Notice of Delay has issued, for the failure to pay or object timely to medical treatment bills authorized under Labor Code section 5402(c), or failure to pay or object to medical treatment bills in accordance with Labor Code section 4603.2, or failure to object to or pay bills for medical legal expense in accordance with Labor Code section 4620. Citations to regulatory authority, California Code of Regulations sections 9792.5 and 9794 have been deleted.

Section 10108(f) is amended to delete the option of paying 34 cents per mile in mileage fees related to medical treatment or evaluation.

Section 10108(g) is amended to provide that the failure, delay, or refusal to pay compensation benefits or expenses shall be subject to the applicable penalties under section 10111, or section 10111.1, or section 10111.2.

Section 10108(h) is amended to provide that the Audit Unit will not assess penalties for violations of failure to make payment of indemnity due if the total indemnity is less than twenty-five dollars (\$25.00) aggregate per claim. The subdivision is further amended to expressly provide that although penalties may not be assessed, the audit subject is still required to pay all indemnity owed.

Section 10108(j) is amended to expressly provide that the Audit Unit may, if necessary to ascertain benefits, add a companion or master claim to the random sample.

Section 10108(m) is amended to substitute "audit subject" for "claims administrator".

## **10. Section 10109 — Duty to Conduct Investigation; Duty of Good Faith**

This section requires claims administrators to conduct a reasonable and timely investigation of workers compensation claims.

Section 10109(d) is amended to require that investigation documentation be retained in the claim file and available for audit review.

## **11. Section 10111.1 — Schedule of Administrative Penalties for Injuries on or After January 1, 1994**

This section sets forth the schedule of administrative penalties for injuries occurring on or after January 1, 1994, subject to any applicable mitigation or exacerbation as allowed under subdivision (e) of this section. The word "subdivision" as used in the section is deleted and substituted by the word "subsection." The word "section," capitalized in the existing regulation, is changed to lowercase. Non-substantive citation changes are made for consistency.

Section 10111.1(a)(9) is amended by replacing the phrase “within 60 days of receipt” with “in the manner required by Labor Code section 4603.2”.

Section 10111.1(a)(10) is amended by replacing the phrase “within 60 days of receipt” with “in the manner required by Labor Code section 4603.2”.

Section 10111.1(b)(3) is amended to replace “Industrial Medical Council” with “DWC Medical Unit”.

## **12. Section 10111.2 — Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule**

This section sets forth the full compliance audit penalty schedule. Subdivision (a) establishes penalties for audit subject that fail to meet or exceed the profile audit review performance standards calculated pursuant to section 10107.1(c)(3) but meet or exceed the full compliance audit performance standards calculated pursuant to section 10107.1(d)(3). Subdivision (b) establishes penalties for audit subjects that fail to meet or exceed the full compliance audit performance standards calculated pursuant to section 10107.1(d)(3). Subdivision (c) sets forth the factors that allow for the mitigation of penalties. In general, the section is amended to substitute “subdivision” for “subsection.” Non-substantive citation changes are made to the section for consistency.

Section 10111.2(a)(9) is amended to reflect that existing section 10100.2(y) is being re-lettered to become section 10100.2(hh).

Section 10111.2(a)(10) is amended to provide that penalty amounts assessed pursuant to subdivisions (a)(1) through (a)(9) will be increased by up to 100%, but will not exceed \$5000 except as provided by Labor Code section 129.5(c)(3), if the failure to pay or late payment was in violation of an award or order of the Workers’ Compensation Appeals Board, the Rehabilitation Unit, or the Administrative Director. The subdivision is further amended to provide that when the award or order is not specific to, but only stated as a lump sum, of any benefit pursuant to subdivisions (a)(1) through (a)(9), or is for any other benefit or medical expenses, the penalty amount of up to 100% as specified above shall be determined based on the equivalent amount of unpaid indemnity as assessed under subdivision (a)(2). The subdivision is further amended to provide that penalties will be assessed separately for both late compliance and/or the failure to pay any portion of an award or order.

Section 10111.2(a)(11) is amended to provide that penalties will be assessed for failure to pay, or late or partial payment of, a Notice of Compensation Due issued as a result of an audit pursuant to Labor Code section 129(b).

Section 10111.2(b)(2) is amended by deleting the phrase “an incomplete investigation of” and replacing it with “a reasonable attempt to investigate”.

Section 10111.2(b)(3) is amended to correct the citation that sets forth the requirement to produce a legible paper copy. The correct citation is California Code of Regulations, title 8, section 10107.1(h). The subdivision is further amended to reduce the number of days for each graduated penalties to apply for the failure to produce a paper copy of the claim file. (\$100 if the file was produced not more than 2 days late; \$250 if the file was produced more than 2 but not more than 4 days late; \$500 if the file was produced more than 4 but not more than 7 days late; \$1,000 if the file was produced more than 7 days late but not more than 15 days late; \$2,500 if the file was produced more than 15 days late but not more than 30 days late; \$5000 if the file was produced more than 30 days late or was not produced.)

Section 10111.2(b)(5) is amended to provide that graduated penalties apply for each failure to object to or pay reimbursement for the reasonable expense incurred for self-procured medical treatment to the injured worker in the manner required by Labor Code section 4603.2. The 60-day timeframe for objecting to a request for reimbursement and the subsequent reference to Labor Code section 4600 are deleted.

Section 10111.2(b)(8)(A) is re-lettered.

Section 10111.2(b)(8)(B) is re-lettered and amended to include a notice of benefits as required by California Code of Regulations, title 8, beginning with section 10133.50. The subdivision is further amended to provide that its stated penalty for each failure to issue a penalty notice will apply unless penalties are assessed pursuant to subdivisions (b)(14) through (b)(20) and (b)(27).

Section 10111.2(b)(8)(C) is re-lettered and amended to include a notice of benefits as required by California Code of Regulations, title 8, beginning with section 10133.50. The subdivision is further amended to provide that its stated penalty for each failure to timely issue a penalty notice will apply unless penalties are assessed pursuant to subdivisions (b)(14) through (b)(20) and (b)(27). The subdivision is further amended to include the supplemental job displacement benefit notice among other required benefit notices.

Section 10111.2(b)(8)(D) is re-lettered and amended to exclude a materially misleading or materially inaccurate or incomplete denial notice assessed under subdivision (b)(21) from the penalty assessed under this subdivision. The subdivision is further amended to include a notice of benefits as required by California Code of Regulations, title 8, beginning with section 10133.50.

Section 10111.2(b)(8)(E) is re-lettered.

Section 10111.2(b)(8)(F) is re-lettered.

Section 10111.2(b)(9) is amended to provide that graduated penalties apply for each failure to pay or object to a billing for a medical-legal expense in the manner required by Labor Code section 4622. The regulatory citation to section 9794 and 60-day timeframe to pay or object to a billing are deleted.

Section 10111.2(b)(10) is amended to provide that a bill for medical treatment provided or authorized by the treating physician includes early medical treatment when a claim has not been accepted or denied pursuant to Labor Code section 5402. The subdivision is further amended to provide that any penalty assessed under the subdivision shall be doubled if the medical treatment provided by the physician was authorized by a physician reviewer through a utilization review process established under Labor Code section 4610 and Title 8, California Code of Regulations, section 9792.7.

Section 10111.2(b)(11) is amended to provide that a bill for medical treatment includes a bill for medical treatment provided pursuant to Labor Code section 5402(c). The subdivision is further amended by deleting all references to a 10% increase. The subdivision is finally amended to provide any penalty assessed under the subdivision will be no greater than the penalty that would have issued under section 10111.2(b)(10) had the bill been unpaid at the time the audit subject was notified that the claim was selected for audit.

Section 10111.2(b)(13) is amended to provide a \$50 penalty for each misdesignation of an indemnity claim as a medical-only claim on the claim log. The subdivision is further amended to provide a \$50 penalty for each failure to distinguish on the claim log an indemnity claim that has no payment of indemnity from one that has indemnity payment(s).

Section 10111.2(b)(15) is amended to substitute "DWC Medical Unit" for "Industrial Medical Council."

Section 10111.2(b)(23) is amended to provide that graduated penalties apply for each failure to comply with, show good cause for non-compliance with, or contest, within 30 days of receipt, any written request or order of the Administrative Director or Audit Unit which is not specified in subdivisions (a)(10), (a)(12), (b)(3), (b)(13), or (b)(24) of section 10111.2. The citation to subdivision (b)(14) is deleted.

Section 10111.2(b)(24) is amended to provide that graduated penalties apply for each failure to fully and/or timely comply with any final award or order of the Workers' Compensation Appeals Board, or the Rehabilitation Unit, or Administrative Director, which is not assessed pursuant to section 10111.2(a)(10). The subdivision is also amended to allow a \$100 penalty for each late payment of interest required pursuant to Labor Code section 5800, and a \$250 penalty for each failure

to pay interest required pursuant to Labor Code section 5800. A \$500 penalty is allowed for compliance (other than a late interest payment) in more than 20 but not more than 35 days from the date of service. The subdivision is further amended to provide that penalties will be assessed separately for both late compliance and the failure to pay a portion of an award or order. The subdivision also sets forth the time period for compliance after which penalties will apply: Compliance with an award or order must be within 20 days of service of the award or order, unless the award or order expressly allows additional time, plus an additional five days for service by mail. If additional time for payment is allowed in the award or order, the penalties set forth under this subdivision will be assessed based on the date the payment is ordered due instead of the date of service.

Section 10111.2(b)(25) is amended to provide a \$100 penalty if the claim form provided to the injured worker is not the current form required by regulations.

Section 10111.2(b)(26) is amended to delete the \$100 penalty for each period of 1 to 14 days' delay in filing the Annual Report of Inventory to a maximum penalty of \$500 for each Annual Report of Inventory. The subdivision is further amended to allow a \$100 penalty if the Annual Report of Inventory or Annual Report of Adjusting Locations was filed not more than 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$500 if the Annual Report of Inventory or Annual Report of Adjusting Locations was filed more than 40 days late, and \$1,000 if the Annual Report of Inventory or Annual Report of Adjusting Locations was overdue more than 40 days and was not filed at the time the audit subject was notified that the claim was selected for audit.

Section 10111.2(b)(27) is added to provide graduated penalties for each failure to comply with the Supplemental Job Displacement Benefit notice requirements of Section 10133.51. A penalty of \$100 is assessed for each materially incomplete or inaccurate notice relating to the supplemental job disability benefit, and, separately, the failure to send the notice by certified mail. Penalties ranging from \$100 to \$500 are assessed for each failure to issue the notice of supplemental job displacement benefits (if not previously issued) within 10 days of the last payment of temporary disability (from 10 to 40 days late).

Section 10111.2(b)(28) is added to provide graduated penalties for each failure to issue the voucher for education-related retraining/skill enhancement in compliance with California Code of Regulations, title 8, section 10133.56(c), unless the employer meets the conditions set forth in Labor Code section 4658.6. Penalties ranging from \$100 to \$1,000 are assessed for the late issuance of the voucher (from 10 to 51 days late).

Section 10111.2(b)(29) is added to provide graduated penalties for each failure to pay any properly documented Supplemental Job Displacement Benefit voucher billing within the time frames required by section 10133.56(h). Penalties ranging from \$100 to \$5,000 are assessed for each failure, the amount of the penalty dependant on the amount of the bill.

Section 10111.2(b)(30) is added to provide that for claims reported on or after April 19, 2004, regardless of the date of injury, the penalty for each failure to timely advise the injured worker of their right to medical treatment under Labor Code section 5402(c) is \$2,500.

Section 10111.2(c)(2) is amended to provide that administrative penalties may be mitigated for good faith in an amount greater than 20% in extraordinary circumstances, when strict application of the mitigation guideline set forth in subdivision (c) would be clearly inequitable.

Section 10111.2(c)(7) is amended to provide that consideration of penalty amounts based on the size of the audit subject location will be based on the number of indemnity claims reported at the audit subject's location for the most recent complete calendar year. The section is further amended to provide that for an audit subject location that is handling only run-off claims, the penalty amount shall be based on the number of open run-off claims and open claims that were closed at the audit subject location in the most recent complete calendar year.

### **13. Section 10112 — Liability for Penalty Assessments**

This section, addressing liability for penalty assessments, is amended to correct the Labor Code citation, section 129.5(e), providing for the issuance of a civil penalty.

### **14. Section 10113.4 — Written Statement and Supporting Evidence**

This section sets forth the procedures for a claims administrator to file a written statement setting forth its legal and factual basis for opposing the issuance of a civil penalty under Labor Code section 129.5(e). Subdivision (a) is amended to provide that the written statement shall only include copies of all documents and all other evidence that the claims administrator intends on introducing into evidence at the hearing. The requirement of providing a witness list is deleted.

### **15. Section 10113.5 — Prehearing Conference; Subject Matter; Prehearing Order**

This section authorizes the Administrative Director, or his or her designee, to conduct a prehearing conference prior to a hearing on the issuance of a civil penalty under Labor Code section 129.5(e). Subdivision (a) is amended to include the exchange of witness lists and of exhibits or documents to be offered in evidence at the

hearing as matters to be considered at the prehearing conference.

### **16. Section 10114.2 — Affidavits**

This section allows the use of witness affidavits or declarations at a civil penalty hearing instead of live testimony. The section is amended to provide that an affidavit may be used if the witness was named in a witness list exchanged either through agreement of the parties or pursuant to an order following a prehearing conference.

### **17. Section 10115 — Appeal of Notice of Compensation Due**

This section sets forth the general provisions for appealing a Notice of Compensation issued under California Code of Regulations, title 8, section 10110. The subdivision is amended to include a citation to California Code of Regulations, title 8, section 10952.

### **18. Section 10115.1 — Appeal of Notice of Penalty Assessment — Filing and Contents**

This section sets forth the procedures for filing an appeal of a Notice of Penalty Assessment issued under Labor Code section 129.5(a) and (c). Subdivision (b) is amended to provide the correct Labor Code citation, section 129(d), regarding the payment of the assessed penalty if a request for a written decision or request for appeals conference is not timely filed and served.

### **19. Section 10115.2 — Appeal of Notice of Penalty Assessment; Conference Process and Delegation of Authority; Notice of Findings, Service**

This section sets forth the procedures for an appeal conference following the filing of a Notice of Appeal of Penalty Assessment. Subdivision (l) is amended to provide the correct Labor Code citation, section 129.5(f), for the filing of a petition for writ of mandate from the Administrative Director's Notice of Findings.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.

- Cost impacts on representative private person or business: The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses.

#### FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed regulations do not apply to any local agency or school district. (See "Local Mandate" section above.)

#### EFFECT ON SMALL BUSINESS

The Administrative Director has determined that small business will not be impacted by the amended regulations. The businesses that are subject to audit

penalties for failure to comply with the workers' compensation regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as "small business."

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment from October 24, 2007 through November 13, 2007 through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the Audit Regulations link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

#### CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

The telephone number of the contact person is (510) 286-7100.

#### CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

George P. Parisotto  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [gparisotto@dir.ca.gov](mailto:gparisotto@dir.ca.gov)

The telephone number of this contact person is (510) 286-7100.

#### AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov).

#### AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 10100.2. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).

#### **TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

##### **NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **December 18, 2008**, at  
10:00 a.m.  
in the Auditorium of the State  
Resources Building,  
1416 9<sup>th</sup> Street, Sacramento,  
California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **December 18, 2008**,  
following the Public  
Meeting,  
in the Auditorium of the State  
Resources Building,  
1416 9<sup>th</sup> Street, Sacramento,  
California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS**

**MEETING:** On **December 18, 2008**,  
following the Public Hearing,  
in the Auditorium of the State  
Resources Building,  
1416<sup>9</sup>th Street, Sacramento,  
California 95814.

At the Business Meeting, the Board will conduct its monthly business.

**DISABILITY ACCOMMODATION NOTICE**

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS  
BY THE OCCUPATIONAL SAFETY AND  
HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, High-Voltage Electrical Safety Orders of the California Code of Regulations, as

indicated below, at its Public Hearing on **December 18, 2008**.

1. **TITLE 8: HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5,  
Group 2  
**High-Voltage Electrical Safety  
Orders**

Descriptions of the proposed changes are as follows:

1. **TITLE 8: HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5,  
Group 2  
**High-Voltage Electrical Safety  
Orders**

**INFORMATIVE DIGEST OF PROPOSED  
ACTION/POLICY STATEMENT OVERVIEW**

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

On February 14, 2007, the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) promulgated standards revising the general industry electrical installation standards found in Subpart S of 29 Code of Federal Regulations (CFR) Part 1910. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 72, No. 30, pages 7136-7221, February 14, 2007, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which are the same as the federal standards except for minor editorial and format differences, or where existing state standards provide a higher level of safety. Furthermore, obsolete cross-references to California Code of Regulations, Title 24 are also proposed for deletion under provisions of the California Code of Regulations, Title 1, Section 100. Prior to September 30, 2002, the Standards Board was mandated by Health and Safety Code Section 18943(b) to submit Title 8 building standards to the California Building Standards Commission for their approval and adoption into Title 24, the California Building Code.

Assembly Bill 3000 (Stats. 2002, c. 1124), which was signed by the Governor and filed with the Secretary of State on September 30, 2002, formally exempted the Standards Board from the building standard requirements contained in the Health and Safety Code as well as those contained in Labor Code Sections 142.3 and 142.6. Consequently, all previous references to Title 24 have been deleted.

In the final rule, Federal OSHA has revised its existing general industry electrical installation standards contained in Sections 1910.302–1910.308 along with relevant definitions found in Section 1910.399. Federal OSHA’s existing electrical standards are based on the 1979 edition of NFPA 70E, Standard for Electrical Safety Requirements for Employee Workplaces. The final federal rule is based primarily on Part I of the 2000 edition of NFPA 70E which, in turn, is based on the 1999 National Electrical Code (NEC). Thus the proposal will reflect more current practice and technology as well as respond to requests from stakeholders that Subpart S reflect the most recent editions of NFPA 70E which the industry is already voluntarily complying with in its present form. Federal OSHA is of the opinion that the revised standard will facilitate compliance by stakeholders, including small businesses, while also improving safety for employees.

Subjects addressed by the proposal include, but are not limited to, the following:

- Definitions of terms used in the HVESO
- Approval of installations and equipment
- Examination, installation and use of equipment
- Marking and identification
- Overcurrent protection
- Grounding
- Wiring methods
- Temporary wiring
- Enclosures for electrical installations
- Interrupting and isolating devices
- Transformers
- Control of motors and generators
- Workspace and guarding
- Communications systems
- Induction and dielectric heating equipment
- Integrated electrical systems

The proposed standards are substantially the same as the final rule promulgated by federal OSHA. Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as federal standards. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to:

1. Identify any issues unique to California related to this proposal which should be addressed in a subsequent rulemaking; and
2. Solicit comments on the proposed effective date.

The responses to comments will be available in the rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standards may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board’s discretion.

#### DOCUMENTS INCORPORATED BY REFERENCE

- 29 CFR 1910.7, Definition and requirements for a nationally recognized testing laboratory.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

#### COST ESTIMATES OF PROPOSED ACTION

OSHA’s estimation of compliance costs found in Federal Register, Vol. 72, No. 30, February 14, 2007, Preamble Section VI, Final Economic and Regulatory Screening Analysis, subsection D, Estimation of Compliance Costs, notes that there is already within the industry widespread use of the 1999 (or later) edition of the National Electrical Code (NEC) upon which the federal promulgation was based. Since this rulemaking proposal merely incorporates the federal standards where necessary to make California’s High-Voltage Electrical Safety Orders at least as effective, Board staff therefore relies on OSHA’s estimate of compliance costs in making a determination that this rulemaking of High-Voltage Electrical Safety Orders will have no appreciable cost impact on the regulated public.

#### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article

XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Ca1.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no significant economic impact is anticipated.

#### ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified

alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than December 12, 2008. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on December 18, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

## TITLE 14. NATURAL RESOURCES

### NOTICE OF PROPOSED RULEMAKING

#### State Mining and Geology Board's Vested Rights Hearing Procedure — Notice/Submission of Written Materials

NOTICE IS HEREBY GIVEN that the State Mining and Geology Board (SMGB) proposes to amend the regula-

tion described below after considering all comments and recommendations regarding the proposed action.

## REGULATORY ACTION

The State Mining and Geology Board (SMGB) proposes to amend § 3959(b)(4) to the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1. The SMGB serves as a Lead Agency in the implementation of the Surface Mining and Reclamation Act of 1975 (SMARA) in Yuba County. In a recent ruling, the California Court of Appeal, Third Appellate District, held that a proper notice and hearing was required for any vested rights determination, and suggested that when the SMGB is acting as the SMARA Lead Agency, the SMGB has the responsibility to conduct the public hearing and make the vested rights determination. On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008. The amended regulation clarifies the administrative procedure for submission of written and responsive materials to the SMGB when acting as lead agency in implementing the Surface Mining and Reclamation Act (SMARA, Public Resources Code § 2710 et seq.) and conducting a vested rights determination (CCR § 3950 et seq.).

## PUBLIC HEARINGS AND WRITTEN COMMENTS

The SMGB has not scheduled a public hearing on this proposed action; however, the SMGB will hold a hearing to receive comments if it receives a written request for a public hearing from any interested person, or his/her authorized representative, no later than 15 days before the close of the written comment period. The hearing facility will be barrier free in accordance with the Americans with Disabilities Act. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The SMGB requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

Any interested person may submit written comments relevant to the proposed regulatory action to the SMGB. The Written Comment Period closes at 5:00 p.m. December 15, 2008. The SMGB will consider only relevant comments received at the SMGB office by that time. Late submittals will not be considered.

## AUTHORITY AND REFERENCE

The SMGB proposes to adopt a regulation that amends 3959(b)(4) to Article 15 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC § 2207(e) and PRC § 2755. Reference: *Calvert v. County of Yuba*, (2007) 145 Cal. App. 4th 613.

## INFORMATIVE DIGEST

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code § 2710 et seq.) was enacted to ensure that significant adverse impacts of mining to the environment are prevented or mitigated and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective lead agencies (cities and counties) for approval, a plan for reclaiming mined lands as well as proof of financial assurances to ensure those mined lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators are in compliance with SMARA's permit and reclamation requirements. The Department of Conservation (Department) and the State Mining and Geology Board (SMGB) provide SMARA lead agency assistance and oversight.

SMARA is a State law that is designed to be implemented primarily by local lead agencies. A lead agency is defined in PRC § 2200.5 (Chapter 2) and PRC § 2728 (Chapter 9) as a city, county, the State Mining and Geology Board (SMGB), and the San Francisco Bay Conservation and Development Commission.

The State Mining and Geology Board (SMGB) serves as a Lead Agency in the implementation of the Surface Mining and Reclamation Act of 1975 (SMARA) in Yuba County. In a December 2007 ruling, the California Court of Appeal, Third Appellate District, held that a proper notice and hearing was required for any vested rights determination, and suggested that when the SMGB is acting as the SMARA Lead Agency, the SMGB has the responsibility to conduct the public hearing and make the vested rights determination. On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008. The SMGB is considering amending § 3959(b)(4) to clarify the administrative procedure for submission of written and responsive materials to the SMGB.

CCR § 3950, et seq. of the SMGB's regulations provides administrative procedures to conduct a vested rights determination when serving as a lead agency under SMARA.

The SMGB intent for introduction of written evidence and argument is reflected in CCR § 3959, in context with regulation 3952, to provide:

1. § 3952 allows for a vested right claimant to file a Request for Determination with written supporting documentation indicating the basis for the claim and identifying the scope and scale of the claim. This submittal is in the nature of the claimant's **opening brief**.
2. Thereafter, § 3954 requires the SMGB to make an initial determination of completeness and jurisdiction, within 15 business days of receipt of the Request for Determination.
3. Thereafter, § 3955 requires a notice of pending vested rights determination within 30 business days to all interested parties.
4. Thereafter, § 3958 requires a public hearing on a vested rights determination to commence no less than 90 business days (i.e., approximately 126 calendar days) after the notice of pending vested rights determination; in no case shall the hearing be scheduled more than 180 business days (i.e., approximately 252 calendar days) after the conclusion that the Request for Determination is within the SMGB's jurisdiction.
5. Thereafter, § 3959(b)(4) requires that "*any additional written materials be delivered to the SMGB no less than 60 calendar days before the hearing.*" The SMGB interprets this provision as the time for receipt of public comment in response to the initial application, in the nature of an **opposition brief and opposing evidence**.
6. Thereafter, § 3959(b)(4) requires that "*in no case will any responsive materials be submitted less than 45 calendar days prior to the hearing.*" The SMGB interprets this requirement as allowing the claimant to submittal rebuttal materials, in the nature of a **reply brief**. Being in the nature of a reply brief, the materials submitted not less than 45 calendar days prior to the hearing should be responsive to issues raised by an opposition brief and opposing evidence, and not raise new issues or evidence.

§ 3959 specifically describes a notice the SMGB will prepare, mail and post, and describes the vested rights matter to be considered; the hearing date and time; an invitation to make statements; and a request concerning delivery or submission of additional written materials and any responsive materials. Although presented as a request, time limits for submission of the materials are described in the regulation.

It is specifically stated under § 3959(b)(4) "[t]he provisions that all additional materials be submitted by the public no less than 60 days before the hearing, and by the applicant no less than 45 days before the hearing, are necessary to allow the SMGB to timely consider the information submitted." Upon review from stakehold-

ers and the Office of Administrative Law, this language could be interpreted to be in conflict with the intent of the SMGB when the language was under consideration and subsequently adopted. Notably, the language of CCR § 3959(b)(4) does not distinguish between applicant and the public.

Since the language of § 3959(b)(4) does not clearly distinguish between the applicant and the public, anyone can submit any additional materials up to 60 days before the hearing, and anyone can submit written material responding to material previously submitted in the period ending 60 days prior to the hearing, at least 45 days prior to the hearing.

The SMGB's intent was to have public written materials submitted 60 days prior to the hearing, and an applicant's responsive materials submitted 45 days prior to the hearing. However, this was not the only possible scenario under this regulation.

The regulation as enacted (effective September 13, 2008) could as well allow the applicant to submit additional written material up to 60 days before the hearing, and others to submit responses up to 45 days before. The current language could also be interpreted to allow anyone to submit "*any additional written materials*" up to 60 days before the hearing, and anyone to submit written material responding to material previously submitted in the period ending 60 days prior to the hearing, at least 45 days prior to the hearing.

Two options were considered:

Option No. 1 — Leave as is: One option would be to leave the regulation as it is, and acknowledge that the 60- and 45-day time limit is a two-way street in regards to a response to comments. The Board would then apply the rule in this manner. Should this prove unwieldy, the SMGB could consider amending the language in a future rulemaking action.

Option No. 2 — Amend the Regulatory Language: The second option would be to amend the language of the regulation to make it clear that the 60 days prior to hearing time limit is for the public, and the 45 days prior to hearing time limit is for the applicant.

Should the SMGB not amend the regulation to clarify, the process could be on-going with no means for the claimant to respond to all public comments, prior to commencement of the vested rights hearing. Furthermore, although the regulations serve the SMGB while acting in a lead agency capacity under SMARA, such regulations do not exist elsewhere, and thus, may be used by other lead agencies, as so desired. It is thus important that the regulations are clear. Thus, the SMGB recommends that the regulatory language be amended to make it clear that the 60 days prior to hearing time

limit is for the public, and the 45 days prior to hearing time limit is for the applicant.

## POLICY STATEMENT OVERVIEW

The proposed language in the amended regulation clarifies the administrative procedure for the public and claimant in the submission of written and responsive materials to the SMGB when acting as a lead agency under SMARA (PRC § 2755 and § 2775) and *Calvert v. County of Yuba*, (2007) 145 Cal. App. 4<sup>th</sup> 613. This regulation is necessary in order to protect the California public by providing an administrative procedure for the SMGB to make a vested rights determination pursuant to SMARA when the SMGB is the operating lead agency.

## CEQA COMPLIANCE

The SMGB has determined that this rulemaking process is not a project under Title 14, CCR § 15378 of the CEQA Guidelines, or is categorically exempt under Title 14, CCR § 15308 of the CEQA Guidelines.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB has made the following determinations:

**Mandate on local agencies and school districts:** SMGB staff determined that adoption of this regulation does not impose any new mandates on local agencies or on local school districts.

**Costs or savings to any State agency:** SMGB staff determined that this proposed regulation imposes no savings or additional expenses to state agencies.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630:** SMGB staff determined this proposed regulation does not impose any additional cost obligations on local agencies or on local school districts.

**Other non-discretionary costs or savings imposed upon local agencies:** SMGB staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

**Cost or savings in Federal funding to the State:** SMGB staff determined that there are no costs or savings in Federal funding to the State.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** SMGB staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language.

**Potential cost impact on private persons or directly affected businesses:** SMGB staff has determined that the proposed regulatory language will not have a potential cost impact on private persons but will have an impact on directly affected businesses should a surface mine operator request a vested right determination.

**Creation or elimination of jobs in California:** SMGB staff has determined that the adoption of these regulations will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

**Significant effect on housing costs:** SMGB staff has determined that the adoption of these regulations will have no significant effect on housing costs.

**Effects on small businesses:** SMGB staff has determined that the imposition of the proposed fee for consideration and conduct of a vested rights determination on a local mining operation (which may meet the criteria for a “small business”) may have a cost impact to that operation, but is not anticipated to have a cost impact on small businesses in general.

## CONSIDERATION OF ALTERNATIVES

The SMGB has determined that no reasonable alternative that it has considered or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. SMGB staff has not identified any adverse impacts resulting from the proposed regulation.

No alternatives have been considered by the SMGB that would be more effective in carrying out the purpose for which the regulatory action is proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses.

## CONFLICT WITH FEDERAL REGULATIONS

This regulation does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication.

## SPECIFIC PURPOSE

The proposed amended regulatory language is intended to clarify the administrative procedure for the public and claimant in the submission of written and responsive materials to the SMGB during conduct of a vested rights determination when acting as a lead agency under SMARA.

CCR Section 3959—Vested Rights Hearing Procedure — Notice/Submission of Written Materials

SMARA provides for, in some instances, the SMGB to assume the role of lead agency for the administration of the Act when a local lead agency is not able to perform that role (PRC Sections 2774.4 and 2774.5). PRC Section 2776 specifically provides conditions for a lead agency to determine whether a person has a vested right to conduct surface mining operations. Since 1998, the SMGB has assumed the role of SMARA lead agency 49 times. Currently, the SMGB is the SMARA lead agency for 11 dredging operations in the San Francisco Bay Area, two counties, and 6 cities, encompassing 47 mines.

This amended Section 3959 is necessary since it provides the administrative procedure for a notice for the SMGB to prepare, mail and post; and describe the vested rights matter to be considered; the hearing date and time; an invitation to make statements; and a request concerning delivery or submission of additional written materials and any responsive materials. Although presented as a request, there are time limits for submission of the materials described in the regulation. The information in this section is required to clarify submissions from the public and responses from the claimant, and the time limits for such submissions and responses.

## STATEMENT OF NECESSITY

In a 3<sup>rd</sup> District Court of Appeal's (DCA) Ruling in the matter of *William Calvert et al. v. County of Yuba et al.*, 145 Cal.App.4<sup>th</sup> 613, the DCA placed upon the SMGB the task of conducting a public hearing and making a determination of vested rights for the Western Aggregates surface mining operation located in Yuba County. In correspondence dated February 8, 2007, a Notice of Intent to seek confirmation of Western Aggre-

gate's vested rights was received by the SMGB. In addition, requests for a vested rights determination to be made by the SMGB for two surface mining operations located in El Dorado County have also been received by the SMGB. Without an administrative procedure to conduct such a hearing, there would be no procedure or a funding mechanism for which the SMGB could conduct such hearings when serving as a lead agency under SMARA as mandated by the DCA.

## IDENTIFICATION OF TECHNICAL/THEORETICAL/EMPIRICAL STUDY, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

In order to determine the range, diversity, and purpose of administrative procedures and available to the SMGB as a lead agency, the SMGB conducted a public hearing on September 11, 2008, to hear preliminary concerns and comments from various stakeholders. No concerns and comments were received.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

An interested person may request a copy of the proposed amended regulation and the Initial Statement of Reasons, or direct questions about the proposed regulation and Initial Statement of Reasons and inspect all supplemental information, upon which the regulation is based, contained in the rulemaking file. The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB's Internet Web Site at: <http://www.conservation.ca.gov/smgbl>.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public comment period, the SMGB may adopt, as final, the proposed amended regulation substantially as described in this Notice and Informative Digest. Copies of the regulation, as finally adopted, will be sent to all persons on the SMGB's public comment mailing list for this issue and others requesting copies. If, as a result of public comment, substantive changes to the regulation are deemed appropriate, copies of the proposed changes will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those who have requested copies of in-

formation regarding the regulation. The modified text will be available to the public for at least 15 days before the SMGB adopts the regulation as revised. The SMGB will accept written comments for a period of at least 15 days after the date upon which changes were made available. If adopted, the regulation will appear in CCR, Title 14, Division 2, Chapter 8, Subchapter 1, Article 15, § 3959(b)(4). A copy of the Final Statement of Reasons may be obtained by contacting the SMGB office as described under the section Contact Person.

#### **CONTACT PERSON**

Inquiries concerning the substance of the adopted regulation should be directed to:

Mr. Stephen M. Testa, Executive Officer  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[www.conservation.ca.gov/smgb](http://www.conservation.ca.gov/smgb)

OR

Nicole Bristow, Executive Assistant  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[www.conservation.ca.gov/smgb](http://www.conservation.ca.gov/smgb)

### **TITLE 21. DEPARTMENT OF TRANSPORTATION**

#### **NOTICE OF PROPOSED RULEMAKING**

##### **FIRE APPARATUS AXLE WEIGHT EXEMPTION**

The California Department of Transportation (Department) proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PUBLIC HEARING**

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her autho-

rized representative, no later than 15 days before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes on December 15, 2008 at 5 p.m. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Casey J. Robb, P.E.  
California Department of Transportation  
Traffic Operations — MS 36  
1120 N Street  
Sacramento, CA 95814

#### **AUTHORITY AND REFERENCE**

Vehicle Code sections 35002 and 35795 authorize the Department to amend the proposed regulations, which would implement, interpret, or make specific Sections 35002 and 35780 of the Vehicle Code.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department proposes to amend Section 1411.7 of Title 21 of the California Code of Regulations (CCR). This section concerns axle weight exemptions for fire trucks. The Department has been working with the fire service industry and the California Highway Patrol on these proposed revisions.

The purpose of the proposed regulations is to increase the allowed axle weights, and to expand the scope of the weight exemptions beyond fire trucks to include all emergency vehicles. The proposed regulations would also increase the single-unit vehicle length limit for fire apparatus to 52 feet.

Vehicle Code section 35780 provides that the Department may issue a special permit authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this code.

Vehicle Code section 35002 authorizes the Department to require that emergency fire vehicles comply with applicable permit requirements, and provides that the Department adopt these requirements.

Vehicle Code section 35795 authorizes the Department to charge a fee for the issuance of permits.

CCR section 1411.7 will specify maximum axle weights allowed on fire apparatus vehicles. The Department proposes the following maximum weights:

single steering axle:	24,000 pounds
single drive axle:	31,000 pounds
tandem axles:	58,000 pounds
tandem rear drive steer axles:	48,000 pounds
tridem axles:	59,000 pounds

CCR section 1411.7 will also allow a single-unit fire apparatus vehicle up to 52 feet in length.

In addition, CCR section 1411.7 proposes to change the definition of "fire apparatus" to include vehicles that transport equipment and personnel, in addition to fires, to other hazardous situations as well.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any State agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost of savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.
- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
  1. Create or eliminate jobs within California.
  2. Create new businesses or eliminate existing businesses within California.
  3. Affect the expansion of businesses currently doing business within California.
- Significant effect on housing costs: None.

#### SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations do not affect small businesses. Fire trucks and other emergency vehicles are owned and operated by local governments. The roads and bridges that may be affected are owned and operated by State and local governments. The only business affected would be the manufacturers of emergency vehicles; they would

benefit because they would expand their markets in California to include the standard emergency vehicles currently sold nationwide.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Casey Robb  
California Department of Transportation  
Traffic Operations — MS 36  
1120 N Street  
Sacramento, CA 95814  
(916) 651-6125

The backup contact person for these inquiries is:

Nader Ebrahimi  
California Department of Transportation  
Traffic Operations — MS 36  
1120 N Street  
Sacramento, CA 95814  
(916) 654-6914

Questions on the substance of the proposed regulations should be directed primarily to Ms. Casey Robb.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Casey Robb at the above address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Casey Robb at the address or phone number listed above.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After holding the hearing (if a hearing is requested) and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Casey Robb at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Robb at the above address.

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our Web site at [www.dot.ca.gov/hq/traffops/trucks/](http://www.dot.ca.gov/hq/traffops/trucks/).

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**NOTICE TO INTERESTED PARTIES**

October 31, 2008

**PROPOSITION 65  
REGULATORY UPDATE PROJECT  
REGULATORY CONCEPT FOR  
HUMAN AND PLANT NUTRIENTS IN  
HUMAN FOOD**

**OPPORTUNITY FOR PUBLIC PARTICIPATION  
NOTICE OF SECOND PUBLIC WORKSHOP**

The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for implementation

of Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5, et. seq., hereafter referred to as Proposition 65 or the Act). As part of its responsibilities related to Proposition 65, OEHHA maintains the regulations implementing the Act. These regulations can be found in Title 27 of the California Code of Regulations, sections 25102–27001 inclusive.

Certain chemicals or compounds such as vitamins and minerals are necessary to promote human health or the healthy growth of plants. Excessive exposures to these same chemicals or compounds can cause human cancer or adverse reproductive effects and can result in the listing of these chemicals under Proposition 65. Vitamin A has been listed under Proposition 65 since 1989. OEHHA is aware of chemicals<sup>1</sup> that may be considered for listing under Proposition 65 that can be considered human or plant nutrients.

While some nutrients are naturally occurring in a food (including dietary supplements) or food crop, they are sometimes intentionally added to a food or to the soil to help supplement human or plant health.<sup>2</sup> While it is important to support the adequate intake of these nutrients, it is also important for the public to receive a warning for excessive exposures that may cause adverse health effects. OEHHA is seeking a way to balance these competing interests through the adoption of a narrowly-tailored set of regulations that will identify certain exposures to nutrients that will not require a warning.

It should be noted that this regulation will only apply to chemicals that are already on the Proposition 65 list, or that are added to the list in the future. The exposure level established in the regulation for a listed chemical would not limit the amount of the chemical that can be added to any particular product and would not restrict the sale or availability of any food product or supplement. Instead, these levels could be used by businesses subject to the Act to determine when a warning is required for an exposure to the listed chemicals in question in a food product.

In April, 2008, OEHHA held a pre-regulatory workshop to discuss a potential regulation that would provide an exemption from the warning requirements of the Act for certain exposures to listed chemicals that are human or plant nutrients. Following review of the comments received at that workshop and in writing following the workshop, OEHHA has re-drafted the possible regulatory language. One significant change to the regulatory concept is that the levels established in the regu-

<sup>1</sup> Boron, certain boron compounds, and manganese.

<sup>2</sup> Naturally-occurring levels of listed chemicals are exempt from the warning requirements of the Act. See Title 27, Cal. Code of Regs., section 25501 (Formerly Title 22, Cal. Code of Regs., section 12501).

lation for individual chemicals will be based on a chemical-by-chemical evaluation, rather than by relying on a percentage of the current Dietary Reference Intake or Recommended Dietary Allowance levels for a given chemical. OEHHA has also developed a similar regulation that would address the situation where a listed chemical is used intentionally during cultivation to support plant growth. The new regulatory concepts are provided below.

OEHHA is offering the public, an opportunity to comment on the re-drafted concept at a workshop and in writing.

The workshop will be held Friday, December 12, 2008 from 10 a.m. to Noon in the Sierra Hearing Room at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, California. Interested parties are encouraged to provide input concerning the re-drafted concept, including offering alternative regulatory language or other approaches that would address these issues.

Interested parties may also submit their ideas in writing. In order for the comment to be considered at this point in the process it must be received by 5:00 p.m. on January 5, 2009. Should OEHHA proceed to propose regulations on this issue, additional opportunities for public comment will be provided. All submissions should be directed to:

Fran Kammerer  
Staff Counsel  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95812  
Or via e-mail to [fkammerer@oehha.ca.gov](mailto:fkammerer@oehha.ca.gov)

If you have special accommodations or language needs, please contact Monet Vela at (916) 323-2517 or [mvela@oehha.ca.gov](mailto:mvela@oehha.ca.gov) by December 1, 2008.

**Possible Regulatory Language (Concept only, this is not a formal regulatory proposal and is subject to change):**

**§ 25506. Exposure to a Human Nutrient in Food**

(a) Human exposure to a nutrient listed in subsection (b) in a food shall not constitute an exposure for the purpose of Section 25249.6 of the Act, to the extent that the person responsible for the exposure can show that the nutrient is naturally occurring in the food pursuant to Section 25501 of these regulations, or that the reasonably anticipated level of exposure to the nutrient from consumption of a food does not exceed the level set forth below.

(b) Nutrient                      Maximum Daily Exposure  
from a Food (micrograms per day)

Chemical A                      x

**§ 25507. Exposure to Plant Nutrient in a Food**

(a) Human exposure to a plant nutrient listed in subsection (b) in a plant-based food shall not constitute an exposure for purposes of Section 25249.6 of the Act to the extent that the person causing the exposure can show that the chemical was added to the soil or other growing medium in an amount necessary for healthy plant development; and that the reasonably anticipated level of exposure to the chemical from consumption of a food does not exceed the level set forth below.

(b) Nutrient                      Maximum Daily Exposure  
from a Food (micrograms per day)

Chemical A                      x

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**NOTICE TO INTERESTED PARTIES**

October 31, 2008

**PROPOSITION 65  
REGULATORY UPDATE PROJECT  
WARNINGS FOR EXPOSURES TO LISTED  
CHEMICALS IN FOODS**

**OPPORTUNITY FOR PUBLIC PARTICIPATION  
NOTICE OF PUBLIC WORKSHOP**

The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for implementation of Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5, et. seq., hereafter referred to as Proposition 65 or the Act). The Act requires that businesses provide "clear and reasonable" warnings for exposures to listed chemicals prior to exposure (Health and Safety Code section 25249.6). This requirement applies to exposures to listed chemicals in foods. OEHHA is investigating the possibility of amending the existing warning regulations currently located in Title 27, California Code of Regulations, section 25601 to add specific options for both the method and content for warnings for exposures to listed chemicals in foods. OEHHA is also considering the possibility of adopting regulations expressly determining the level of responsibility between retailers and manufacturers for the provision of warnings for consumer products exposures. Many interested parties have requested that OEHHA provide more guidance concerning acceptable methods for providing warnings to consumers for exposures to listed chemicals.

cals in foods purchased at retail stores and that OEHHA clarify the relative responsibilities of product manufacturers versus retailers.

The guidance currently provided by the existing regulations concerning the range of possible options for providing Proposition 65 warnings for exposures from foods in the retail context is very limited. In addition, guidance may be needed concerning the content of any required warning (i.e. what additional information may be provided and in what format that would still be considered "clear and reasonable" under the Act).

On March 14, 2008, OEHHA held a public workshop at the California Environmental Protection Agency Headquarters Building in Sacramento, where suggestions were invited from the public and business communities about the options available for this regulatory project. Among several suggestions, one recommendation was that a workgroup be created, composed of representatives from different interest groups, that would work with OEHHA to develop a proposed regulation. A workgroup was created, and information about the monthly meetings of the group was posted on the OEHHA Web site. After receiving input in four workgroup meetings, OEHHA has developed a draft framework for this regulation. OEHHA is now requesting public input concerning these concepts. The draft concepts will be posted on the OEHHA Web site prior to the workshop.

On December 3, 2008 from 10 a.m. to Noon in the Sierra Hearing Room at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, California, OEHHA will hold an informal public workshop for the purpose of discussing the regulatory concepts and gathering input from interested parties concerning this potential regulatory action.

Interested parties are encouraged to attend the workshop and participate in the discussion. They may also submit their ideas in writing by 5:00 p.m. on December 17, 2008. Please note that any formal regulatory proposal that is eventually proposed by OEHHA may substantially differ from this conceptual framework. Should OEHHA proceed to propose regulations on this issue, additional opportunities for public comment will be provided. All submissions should be directed to:

Carol J. Monahan-Cummings  
Chief Counsel  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95812  
Or via e-mail to [cmcummings@oehha.ca.gov](mailto:cmcummings@oehha.ca.gov)

If you have special accommodations or language needs, please contact Monet Vela at (916) 323-2517 or [mvela@oehha.ca.gov](mailto:mvela@oehha.ca.gov) by November 26, 2008.

## **OAL REGULATORY DETERMINATIONS**

### **OFFICE OF ADMINISTRATIVE LAW**

#### **ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the  
California Code of Regulations)**

### **DEPARTMENT OF MENTAL HEALTH**

#### **Agency being challenged:**

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel  
Office of Administrative Law  
300 Capitol Mall, Ste. 1250  
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

#### **Petitioner:**

William Sargent  
27899 Whitmore Road  
Millville, CA 96062

#### **Agency contact:**

Stephen Mayberg, Director  
Department of Mental Health  
1600-9th Street  
Sacramento, CA 95814

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or [mmolina@oal.ca.gov](mailto:mmolina@oal.ca.gov).

**CITIZENS COMMISSION ON  
HUMAN RIGHTS®**

*Established in 1969 by the Church of  
Scientology® to Investigate and Expose  
Psychiatric Violations of Human Rights*

**CCHR Human Rights Investigator**

William Sargent  
27899 Whitmore Road  
Millville CA. 96062  
Phone 530 472 3299  
sarg@jett.net & cchr@jett.net

September 18, 2008

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento CA 95814-4339  
www.oal.ca.gov

RE: Petition to Challenge Alleged “Underground  
Regulations” at Napa State Hospital  
Administrative Directives (ADs) #485; #763

I am writing to challenge Napa State Hospital (NSH) Administrative Directives (ADs) #485; 763, as alleged “underground regulation” and upon the information and belief I obtained contained herein. Opponents of a proposed rule may file long and complex comments, which the agency must address point by point. (Gov. Code, §§ 11346.8, subd. (a), 11346.9.) (See also *Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner*, 14 Cal.4th 557, 569, 575 (1996))

The *Tidewater* case explains that the Administrative Procedures Act (APA) establishes the procedures by which state agencies may adopt regulations. The agency must give the public notice of its proposed regulatory action (Gov. Code, §§ 11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of the reasons for it (Gov. Code, § 11346.2, subds. (a), (b)); give interested parties an opportunity to comment on the proposed regulation (Gov. Code, § 11346.8); respond in writing to public comments (Gov. Code, §§ 11346.8, subd. (a), 11346.9); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law (OAL) (Gov. Code, § 11347.3, subd. (b)), “which reviews the regulation for consistency with the law, clarity, and necessity” (Gov. Code, §§ 11349.1, 11349.3). (Quotation marks mine.)

*Tidewater* continues that “[o]ne purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation (*Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204–205) (*Armistead*)), as well as notice of the law’s requirements so that they can conform their conduct accord-

ingly (*Ligon v. State Personnel Bd.* (1981) 123 Cal.App.3d 583, 588) (*Ligon*)). The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny.” (See *San Diego Nursery Co. v. Agricultural Labor Relations Bd.* (1979) 100 Cal.App.3d 128, 142–143.)

The agency must devote significant resources to building an agency file that will satisfy the Office of Administrative Law. (Gov. Code, § 11347.3, subd. (b).) Among other things, the agency must establish the necessity of the proposed rule. (Gov. Code, § 11349.1.) In addition, opponents of a proposed rule may file long and complex comments, which the agency must address point by point. (Gov. Code, §§ 11346.8, subd. (a), 11346.9.) (*Tidewater*, supra, at 575.)

**Allegations and Contentions**

I respectfully allege and contend upon information and belief that NSH rarely, if ever, complies with the Government Code (Gov. Code, § 11340.5) requirements of the APA or the OAL, and NSH did not give the public notice of its proposed regulatory action of enacting and/or or revising ADs # 485; 763, NSH did not issue a complete text of the proposed ADs with a statement of the reasons for them, NSH did not give interested parties an opportunity to comment on the proposed ADs, NSH did not respond in writing to public comments, and NSH did not forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law and thus precluded the OAL from reviewing the ADs for consistency with the law, clarity, and necessity.

NSH AD #485, has been issued, utilized, enforced, and primarily applied patients in NSH Program 1 Wards and should be legally revised to comply with relevant state and federal constitutional, decision, and statutory laws detailing the rights mental patients confined in state hospitals have concerning their outgoing and incoming legal, personal, business, and religious mail and packages and made a regulation codified in the California Code of Regulations.

NSH AD #485, page 6, paragraph “B,” sentence 3, states verbatim that “Unit staff shall maintain a log of all outgoing legal correspondence, to include client’s name, date recipient, and staffs signature.” However, upon information and belief, this is rarely done and patients have to argue with staff to get them to comply with this. Nevertheless, upon information and belief,

patients are not given receipts for their legal mail and on at least one occasion when a patient asked for a copy of the log of all his outgoing legal correspondence he was told the log was lost.

All courts have time limits and if a person incarcerated in a prison or a mental institution does not file a legal document with a court within a specified time, the matter can be dismissed and/or other sanctions can be imposed unless the person has proof they mailed the letter on time. The courts recognize that prisons and other institutions' mail systems are not perfect and mail is some times lost and service is sometimes slow and this has caused prisoners to be late filing notices of appeal, and the courts realized this is not fair so the courts made a law called the "Prison-delivery" Rule. The way I read and allege the "Prison-delivery" Rule works is that prisoners are given a dated and signed receipt for their legal mail when they mail their mail and if any legal mail is late or lost, etc., the prisoner can send a copy of their receipt to the court to verify he or she mailed the letter on time and the receipt excuses any tardiness. I allege the California Supreme Court reaffirmed the "Prison-delivery" Rule is the case of *In re Jordan* (1992) 4 Cal.4th 116, and enunciated "[a] prisoner's notice of appeal is deemed to have been filed in the office of the appropriate county clerk on the date, within the filing period prescribed by rule 31(a), on which it was delivered to the prison authorities. If the notice of appeal is received by the county clerk following expiration of the 60-day filing period, the prisoner who seeks to pursue his or her appellate rights has the burden of establishing that the notice of appeal was delivered to prison authorities within the 60-day period."

It should also be mandatory that a secure mailbox is placed on every ward in every mental institution and only the personnel from the mailroom have a key to this box and this would avoid mail being lost between the Ward Office, the Program Office, and then the mailroom as sometimes is the case, as the procedure now is.

Various other State and Federal Court documents, in addition to notices of appeal, also have filing time limits and the same rational applies if these documents are late or lost after an inmate mails his or here legal papers to the Courts, and it should be mandatory in the California Code of regulations in all cases that inmates receive a dated receipt when Court documents are given to the staff to place in a ward mail box to be mailed to the Courts.

AD #485 and an attachment to AD # 763 requires patients to submit all their outgoing mail, legal and otherwise, to the staff unsealed before mailing for the staff to inspect for contraband, but the Supervising staff will not provide a verbal or written list of what is considered contraband for mailing out of the institution.

I allege as I understand this, the earlier California Supreme Court case also called *In re Jordan* (1972), found in 7 Cal.3d 930, states that prisoners can seal all their outgoing legal mail, and federal and state courts are in agreement that persons judicially committed to mental hospitals have more rights, and are supposed to receive "more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish," and this includes rights concerning all the mental patients' mail. (*Sharp vs. Weston*, 233 F. 3d 1166, 1172 (9<sup>th</sup> Cir. 2000), quoting *Youngberg v. Romeo* (1982) 457 U.S. 307 at 322, 102 S.Ct. 2452; Cf. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976) Moreover, mentally disordered persons—regardless of their path to the institution—should be regarded as patients rather than inmates in institutions (*Department of Developmental Services v Ladd* (1990) 224 Cal.App. 3d 128, 137-138), and "mentally disordered persons charged with crime or to the criminally insane subject to judicial commitment shall be treated, not as criminals, but as sick persons." (California Welfare and Institutions Code, § 6250.)

Furthermore, *People v. Buttes* states in pertinent part that a person found not guilty by reason of insanity "is found not guilty of committing the crime." (Pen. Code, § 1026)." (See *People v. Buttes* (1982) 134 Cal.App.3d 116, 122.) The *People v Buttes* Court at p. 122, explains the California Supreme Court in *In re Franklin* (1972) 7 Cal.3d 126, 141-142, quoted from *Bolton v. Harris* (D.C. Cir. 1968) 395 F.2d 642, 651. *Bolton v. Harris* recognizes that "patient[s] committed to mental hospital after being 'found not guilty of offense by reason of insanity' must prove freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future." (See *Bolton v. Harris*, 395 F.2d 642 (1968) (Italics added.) The point is that an agency such as NSH or any other agency should not impose regulations and/or "underground regulations" that are more restrictive than the regulations imposed on persons duly convicted of crimes that are confined in state prisons.

There is no valid legal or other logic, and there is no legitimate penological reason, to force mental patients to submit all their outgoing legal mail unsealed to staff for inspection, and mental patients are supposed to receive more rights than prisoners. Mental patients should also not be required to submit all their outgoing personal, religious, and business mail to staff for inspection. It is hard to imagine what contraband mental patients would want to send out of a mental institution to the Courts, lawyers, Church organizations, businesses, or their families. It seems only logical that any mental patient capable of securing true contraband

would keep the same for his or her own use and not send out of the institution. (See *In re Jordan* (1972) 7 Cal.3d 930, 937, citing *Marsh v. Moore* (D.Mass. 1971) 325 F.Supp. 392, 395) (“At most, there appears to be only a very remote and wholly speculative danger that an attorney, an officer of this court, would assist a prisoner in avoiding legitimate prison regulations.”)

Upon information and belief NSH did not comply with the requirements set forth in the Government Code concerning the APA and OAL, and AD # 763 is an alleged “underground regulation, that has been issued, utilized, enforced, and applied to patients throughout NSH, and AD #763 should be legally revised and codified in the California Code of Regulations.

AD# 763 does not reflect or state that mental patients are supposed to receive better treatment, more considerate conditions of confinement, more rights, and AD # 763 does not reflect or state any of this and does not state or reflect that mental patients cannot be subjected to “civil death” and the prisoners rights listed in Penal Code, § 2601, et seq., essentially give prisoners more rights and better treatment than mental patients, inter alia.

Mental patients have the right to (1) engage in the protected conduct of mailing complaints to friends, family, the courts, and to human rights organizations, (2) the adverse action of NSH requiring patients to submit all their outgoing mail to staff unsealed for inspection would deter a person of ordinary firmness from continuing to engage in that conduct, and (3) it is alleged the adverse action apparently was motivated, at least in part, to dissuade, deter and prevent patients from exercising protected conduct, and this is unconstitutional. (See *Herron v. Harrison*, 203 F.3d 410, 415 (6<sup>th</sup> Cir. 2000); *Bell v. Johnson*, 308 F.3d 594, 600 (6<sup>th</sup> Cir. 2002); *Spruytte v. Hoffner*, 181 F.Supp.2d 736, 741 (W.D. Mich. 2001); *Toolasprashad v. Bureau of Prisons*, 286 F.3d 576, 585 (D.C. Cir. 2002), citing *Crawford-El v. Britton*, 93 F.3d 813, 826 (D.C.Cir.1996), rev’d on other grounds, 523 U.S. 574, 118 S.Ct. 1584; *Gomez v. Vernon*, 255 F.3d 1118, 1123 (9<sup>th</sup> Cir. 2001); *Hines v. Gomez*, 108 F.3d 265, 268 (9<sup>th</sup> Cir. 1997); *Schwartzman v. Valenzuela*, 846 F.2d 1209, 1212 (9<sup>th</sup> Cir. 1988), et al.)

The Consent Judgment the US Justice Department made with NSH on May 2, 2006, provides at page 75(J)

“Each State Hospital unconditionally permits individuals to exercise their constitutional rights of free speech, including the right to petition the government for redress of grievances without state monitoring and provides them due process,” but NSH staff requiring patients to submit their outgoing mail to staff unsealed for inspection and mailing does not unconditionally permit individuals to exercise their constitutional rights of free speech and constitutes state monitoring of free speech.

### Public Policy Argument

The issues presented are meritorious and issues of broad public interest likely to recur (*In re Lee* (1978) 78 Cal.App.3d 753, 756; *In re William M.* (1970) 3 Cal.3d 16, 23–25 [89 Cal.Rptr. 33, 473 P.2d 737, and cases cited) and personify cases where persons at low levels of society are perpetually deprived of constitutional rights; and should not be left utterly remediless and defenseless against repetitions of unconstitutional and unlawful conduct. (*Sibron v. New York* (1968) 392 U.S. 40, 52–53; see also *In re John Ballay* (1973) 482 F.2d 648, 651, citing *Sibron v. New York*, 392 U.S. 40, at p. 57)

### Request

I request the AOL to determine whether or not NSH is complying with Government Code. § 11340.5 when it makes regulations and specifically if NSH ADs #485; 763 were put through the procedures set forth in the Government Code, the APA, and the AOL and I request the AOL to determine if ADs #485; 763 are underground regulations based on the foregoing information and any other criteria.

I certify that I mailed a copy of this petition challenging ADs #485 and #763 to the California Department of Mental Health to: Stephen W. Mayberg, Ph.D. Director, California Department of Mental Health (916) 654–2309, 1600 9<sup>th</sup> Street, Rm. 151, Sacramento, CA 95814.”

Sincerely,

William Sargent

## DISAPPROVAL DECISIONS

### BUREAU OF BARBERING AND COSMETOLOGY

State of California  
Office of Administrative Law

In re:

Bureau of Barbering and  
Cosmetology of the Department of  
Consumer Affairs; and Board of  
Barbering and Cosmetology

Regulatory Action: Title 16  
California Code of Regulations

Amend section: 950.3

#### DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2008-0902-01 S

#### SUMMARY OF REGULATORY ACTION

In this regulatory action, the Bureau of Barbering and Cosmetology of the Department of Consumer Affairs and the Board of Barbering and Cosmetology proposed to amend section 950.3 in title 16 of the California Code of Regulations entitled "Curriculum for Skin Care Course." This regulation sets forth the required "Esthetician Curriculum" for an approved skin care course offered at an approved school. Substantial revisions and restructuring of the existing curriculum requirements were proposed.

#### DECISION

On October 15, 2008, the Office of Administrative Law (OAL) notified the Bureau of Barbering and Cosmetology of the Department of Consumer Affairs and the Board of Barbering and Cosmetology of the disapproval of this regulatory action. The reasons for the disapproval were the following: (1) failure of the regulation to comply with the "Consistency" standard of Government Code section 11349.1, (2) failure of the regulation to comply with the "Clarity" standard of Govern-

ment Code section 11349.1, (3) failure of the regulation to comply with the "Necessity" standard of Government Code section 11349.1, (4) failure to adequately summarize and respond to each public comment made regarding the proposed action, (5) failure to comply with all required Administrative Procedure Act procedures, and (6) a number of the required documents were missing or defective.

Date: October 22, 2008

Bradley J. Norris  
Senior Staff Counsel

FOR: SUSAN LAPSLEY  
Director

Original: Kristy Underwood  
Copy: Stacy Meza

### DEPARTMENT OF MOTOR VEHICLES

State of California  
Office of Administrative Law

In re:

Department of Motor Vehicles

Regulatory Action: Title 13  
California Code of Regulations

Adopt sections: 225.38  
Amend sections: 225.00, 225.03, 225.06, 225.09,  
225.21, 225.35, 225.45, 225.48,  
225.54, 225.72

#### DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3  
OAL File No. 2008-0821-03 S

#### SUMMARY OF REGULATORY ACTION

In this regulatory action, the Department of Motor Vehicles (Department) proposed to amend a number of its existing regulations and adopt one new regulation in title 13 of the California Code of Regulations pertaining to its "Business Partner Automation Program" (BPA Program). Vehicle Code section 1685 authorizes the Department to establish contracts for electronic programs that allow qualified private industry partners (business partners) to join the Department in providing

services, including processing and payment programs for vehicle registration and titling transactions, and further authorizes the Department to adopt regulations implementing the BPA Program. In 2002, the Department first adopted regulations implementing Vehicle Code section 1685, establishing the BPA Program, and the program has been expanding in scope and has been modified in a series of regulatory amendments and additions since that time. A major focus of this current regulatory action is the addition of a number of new types of transactions to the scope of the authorized transactions that can be performed by the business partners.

### DECISION

On October 3, 2008, the Office of Administrative Law (OAL) notified the Department of the disapproval of this regulatory action. The reasons for the disapproval were the following: (1) failure of the regulations to comply with the "Clarity" standard of Government Code section 11349.1, (2) failure of the regulations to comply with the "Necessity" standard of Government Code section 11349.1, (3) failure of the regulations to comply with the "Authority" standard of Government Code section 11349.1, (4) failure of the regulations to comply with the "Reference" standard of Government Code section 11349.1, (5) failure to comply with all required Administrative Procedure Act procedures, (6) failure to meet all of the requirements for incorporation by reference as set forth in section 20 of title 1 of the California Code of Regulations, and (7) a number of the required documents were defective.

Date: October 10, 2008

\_\_\_\_\_  
Bradley J. Norris  
Senior Staff Counsel

FOR: SUSAN LAPSLEY  
Director

Original: George Valverde  
Copy: Christie Patrick

## **SUMMARY OF REGULATORY ACTIONS**

### **REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State,

Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0905-05  
**AIR RESOURCES BOARD**  
Commercial Harbor Craft

This action would require specified commercial harborcraft to replace or upgrade unregulated and Tier 1 diesel engines with new certified engines meeting more stringent U.S. EPA standards.

Title 13, 17  
California Code of Regulations  
ADOPT: 2299.5, 93118.5  
Filed 10/20/2008  
Effective 11/19/2008  
Agency Contact: Amy Whiting (916) 322-6533

File# 2008-0926-04  
**BOARD OF FORESTRY AND FIRE PROTECTION**  
Emergency Notice for Fuel Hazard Reduction, 2008

These amendments to 14 Cal. Code Regs. section 1052.4 delete redundant language related to wildlife habitat protection, moves language regarding Public Resources Code section 4291 to a separate subsection and clarifies fuel removal spacing standards.

Title 14  
California Code of Regulations  
AMEND: 1052.4  
Filed 10/22/2008  
Effective 11/21/2008  
Agency Contact:  
Christopher Zimny (916) 653-9418

File# 2008-0903-02  
**CALIFORNIA GAMBLING CONTROL COMMISSION**  
Licensing Regulations (Withdrawals, Denials)

This regulatory action establishes the procedures for submitting a request to withdraw an application for licensure. This includes licensing individuals and entities for work permits, registrations, findings of suitability and state gambling licenses. These regulations also deal with when the Commission may determine that an application has been abandoned. Additionally, the regulations establish hearing procedures and due process rights following the denial of an application or the imposition of conditions on the license, and provide certain criteria and circumstances for when the Commission may deny a state gambling license.

**Title 4**

California Code of Regulations

ADOPT: 12047, 12048, 12050, 12348 AMEND:  
12002

Filed 10/16/2008

Effective 11/15/2008

Agency Contact:

Heather Cline-Hoganson (916) 274-6328

File# 2008-1008-03

**CALIFORNIA SEA URCHIN COMMISSION****Conflict of Interest Code**

The California Sea Urchin Commission is adopting its conflict of interest code found at title 2, ch. 115, section 59600, California Code of Regulations. The Fair Political Practices Commission approved this adoption for filing on September 8, 2008.

**Title 2**

California Code of Regulations

ADOPT: 59600

Filed 10/22/2008

Effective 11/21/2008

Agency Contact: Jane McCluskey (916) 444-8194

File# 2008-0903-04

**COMMISSION ON PEACE OFFICER STANDARDS  
AND TRAINING****Child Safety When a Caretaker Parent or Guardian is  
Arrested**

Penal Code section 13517.7, requires the California Commission on Peace Officer Standards and Training (Commission) to adopt course curriculum that addresses child safety when a caretaker parent or guardian is arrested. Added in 2006 by Senate Bill 1942 (Chapter 729, Statutes of 2006), Penal Code section 13517.7 directs POST to develop guidelines and training for use by state and local law enforcement officers to include six topics in both the guidelines and the training. This proposed regulatory change to title 11 of the California Code of Regulations, section 1081 addresses only the course curriculum related to child safety when a caretaker parent or guardian is arrested.

**Title 11**

California Code of Regulations

AMEND: 1081

Filed 10/16/2008

Effective 11/15/2008

Agency Contact: Connie A. Paoli (916) 227-4854

File# 2008-0917-01

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION****Parole Violation Decision-Making Instrument Pilot  
Program**

Pursuant to Penal Code Section 5058.1, the California Department of Corrections and Rehabilitation is having printed in title 15 of the California Code of Regulations, at section 3999.6, an instructional memorandum and related forms, appendices, and an attachment which together constitute the Pilot Program for the Parole Violation Decision-Making Instrument. The purpose of the pilot program is to implement and evaluate an instrument and process which will enable staff to uniformly apply objective criteria to violations of parole in order to identify the appropriate category of response.

**Title 15**

California Code of Regulations

ADOPT: 3999.6

Filed 10/15/2008

Effective 10/15/2008

Agency Contact: Randy Marshall (916) 341-7328

File# 2008-1014-04

**DEPARTMENT OF FOOD AND AGRICULTURE****Oriental Fruit Fly Interior Quarantine**

This factual emergency action expands the existing oriental fruit fly interior quarantine by approximately 18 square miles surrounding the oriental fruit fly infestation in the Lakewood area of Los Angeles and Orange counties.

**Title 3**

California Code of Regulations

AMEND: 3423(b)

Filed 10/17/2008

Effective 10/17/2008

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2008-1016-01

**DEPARTMENT OF FOOD AND AGRICULTURE****Light Brown Apple Moth Interior Quarantine**

DFA proposes to expand the regulatory quarantine areas in Santa Clara County, Contra Costa County, Sonoma County, Napa County and Monterey County. DFA also proposes to eliminate one quarantine area in a different part of Sonoma County.

On September 29, 2008, two adult male LBAM were taken from separate traps in the San Jose area of Santa Clara County (Pest and Damage Records ("PDR"))

numbers 1495331 and 1495329). These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this part of Santa Clara County.

On September 19, 2008, an adult male LBAM was trapped in the Rodeo area of Contra Costa County. On October 1, 2008, an adult LBAM was trapped in the Hercules area of Contra Costa County. This meets the regulatory protocol for expanding the quarantine area in these areas of Contra Costa County.

On October 2, 2008, two adult LBAMs were trapped in separate traps in Sonoma County. These LBAM were also trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Sonoma County.

On August 27, 2008, an adult male LBAM was trapped in the Vallejo area of Solano County. On October 3, 2008, an adult male LBAM was trapped in the American Canyon area of Napa County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Napa County.

On October 8, 2008, two adult LBAMs were trapped in separate traps in Carmel and Del Rey Oaks areas of Monterey County. These LBAMs were trapped within three miles of each other and within one life cycle, meeting the regulatory protocol for expanding the quarantine area in these areas of Monterey County.

Finally, DFA is removing a 15 square mile area in Sonoma County because, since May 2, 2008, no additional LBAM life stages have been detected. Three successive LBAM life cycles have been completed. This meets the federal regulatory protocol to remove the quarantine area. The USDA has approved its removal.

Title 3  
California Code of Regulations  
AMEND: 3434(b)  
Filed 10/20/2008  
Effective 10/20/2008  
Agency Contact: Stephen S. Brown (916) 654-1017

**File# 2008-1014-03**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Diaprepes Root Weevil Interior Quarantine**

This emergency regulatory action specifies an area of approximately two square miles in the Fountain Valley area of Orange County as being under quarantine for the pest *Diaprepes abbreviatus* (*Diaprepes* root weevil) as a result of a finding of adult *Diaprepes* root weevils at a residence in this area on October 7th. The effect of this regulation is to restrict movement of hosts and possible

carriers and provide authority for the State to perform quarantine activities against *Diaprepes* root weevils in the two square mile area.

Title 3  
California Code of Regulations  
AMEND: 3433(b)  
Filed 10/20/2008  
Effective 10/20/2008  
Agency Contact: Stephen S. Brown (916) 654-1017

**File# 2008-0930-07**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Oak Mortality Disease Control**

This is the certification of compliance with the Administrative Procedure Act of the emergency regulatory action OAL File 2008-0528-04E, which modified the existing oak mortality disease control regulation by adding two new plants, *cercis chinense* (Chinese redbud) and *magnolia figo* (banana shrub) to the list of associated articles stocked in nurseries whose movements are regulated as hosts or potential carriers that may transfer the disease from an infested area. The emergency rulemaking was accomplished in anticipation of a federal order issued May 15, 2008 that became effective on June 9, 2008 which added these two plants to the federal regulations.

Title 3  
California Code of Regulations  
AMEND: 3700(c)  
Filed 10/22/2008  
Agency Contact: Stephen S. Brown (916) 654-1017

**File# 2008-1008-01**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Diaprepes Root Weevil Interior Quarantine**

This emergency regulatory action specifies an area of approximately one square mile in Laguna Beach as being under quarantine for the pest *Diaprepes abbreviatus* (*Diaprepes* root weevil).

Title 3  
California Code of Regulations  
AMEND: 3433(b)  
Filed 10/15/2008  
Effective 10/15/2008  
Agency Contact: Stephen S. Brown (916) 654-1017

**File# 2008-0910-02**  
**DEPARTMENT OF MOTOR VEHICLES**  
**Mature Driver Improvement Course Approval Program**

In this regulatory action, the Department of Motor Vehicles adopts regulations pertaining to the "Mature Driver Improvement Course Approval Program," a program which approves and regulates driver improvement courses specifically designed for the safe driving

needs of drivers who are 55 years of age or older. These regulations principally implement Vehicle Code sections 1675, 1676, and 1677.

**Title 13**

California Code of Regulations

ADOPT: 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14, 346.16

Filed 10/20/2008

Effective 11/19/2008

Agency Contact: Randi Calkins (916) 657-8898

File# 2008-0905-01

**EMPLOYMENT DEVELOPMENT DEPARTMENT  
Verification Criteria**

The Employment Development Department (“EDD”) proposes to amend their regulation to incorporate new and changing “forms” that are acceptable as verification of federal eligibility for employment. They are repealing the outdated list of acceptable Employment Authorization Document forms and want to replace it with a reference to the federal laws that contain the types of acceptable documentation. The employment verification provisions are contained in the Immigration and Nationality Act Section 274A (8 U.S.C. section 1324a) and Title 8 Code of Federal Regulations part 274a.2.

**Title 22**

California Code of Regulations

AMEND: 2051-3

Filed 10/15/2008

Effective 11/14/2008

Agency Contact: Laura Colozzi (916) 654-7712

File# 2008-0918-02

**PHYSICIAN ASSISTANT COMMITTEE****Approved Controlled Substance Education Courses**

The Physician Assistant Committee proposes to adopt the requirements for approval of Controlled Substance Education Courses for Physician Assistants. Prior to enactment of AB 3 in 2007, physician assistants had to obtain patient specific authority from the supervising physician prior to writing drug orders for certain controlled substances (Schedule II through V). In 2007, AB 3 (Stats. 2007, Chapter 376; Bass) eliminated the requirement for the specific prior authority if a Physician Assistant completed an approved Controlled Substance Education Course and the Physician Assistant was authorized to issue and administer the controlled substance through a delegation of services agreement with a supervising physician.

**Title 16**

California Code of Regulations

ADOPT: 1399.610, 1399.612 AMEND: 1399.502

Filed 10/17/2008

Effective 11/16/2008

Agency Contact: Glenn L. Mitchell (916) 561-8783

File# 2008-0910-01

**RESOURCES AGENCY****California Environmental Quality Act**

This change without regulatory effect amends Appendix C to the California Environmental Quality Act (CEQA) Guidelines set forth in title 14 of the California Code of Regulations to reflect recent legislative changes, to correct names of state agencies used in the appendix and to abbreviate some words in the names of state agencies for format purposes.

**Title 14**

California Code of Regulations

AMEND: 15387 Appendix C

Filed 10/21/2008

Agency Contact: Kirk Miller (916) 653-5656

File# 2008-1009-02

**SECRETARY OF STATE****Post Election Manual Tally Requirements in Close Contests**

This emergency rulemaking adopts the already promulgated post election manual tally requirements in close contests, pursuant to County of San Diego v. Debra Bowen (2008) 166 Cal.App.4th 501. It requires that in election contests where the margin of victory is less than half of one percent (0.5%) a manual tally of ten percent of the precincts of the contested race be conducted in addition to that already required by Elections Code section 15360.

**Title 2**

California Code of Regulations

ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127

Filed 10/20/2008

Effective 10/20/2008

Agency Contact: Pam Giarrizzo (916) 653-7244

File# 2008-0924-02

**STATE ALLOCATION BOARD****Leroy F. Greene School Facilities Act of 1998; Implement AB 1014**

AB 1014 (Stats. 2007, Chap. 691) added new methods of calculating eligibility for the School Facility Program (“SFP”) new construction financing. These new methods include modified weighting mechanisms to calculate prospective enrollment, birth rate augmentation to kindergarten and first grade enrollment, ability

to use tenth year projection to project student enrollment and using pupil residence for High School Attendance Area (HSAA) reporting. Enrollment projections are used to determine SFP new construction financing.

**Title 2**

California Code of Regulations

ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03

Filed 10/21/2008

Effective 10/21/2008

Agency Contact: Robert Young (916) 445-0083

File# 2008-0909-01

STATE WATER RESOURCES CONTROL BOARD

TMDL for Copper, Lead, and Zinc in Chollas Creek

This regulatory action is a basin plan amendment to establish a TMDL and associated load and wasteload allocations for copper, lead and zinc in Chollas Creek in San Diego County.

**Title 23**

California Code of Regulations

ADOPT: 3989.7

Filed 10/22/2008

Effective

Agency Contact: Nirmal Sandhar (916) 341-5571

File# 2008-0926-07

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Regulations for Non-Affiliates on University of California Property

This is the first set of regulations published by the Regents of the University of California (the "Regents") in the California Code of Regulations. Education Code section 92440.5 requires the publication of these regulations. Following the lead of the California State University system, the Regents filed this package with the Office of Administrative Law for filing with the Secretary of State and printing in the California Code of Regulations.

**Title 5**

California Code of Regulations

ADOPT: 100000, 100001, 100002, 100003, 100004, 100005, 100006, 100007, 100008, 100009, 100010, 100011, 100012, 100013, 100014, 100015

Filed 10/17/2008

Effective 10/28/2008

Agency Contact:

Christopher M. Patti (510) 987-9800

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN May 21, 2008 TO  
October 22, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

10/22/08 ADOPT: 59600

10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03

10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127

09/04/08 ADOPT: 18530.45

09/04/08 AMEND: 18946.4

08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129

08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905

07/16/08 ADOPT: 18946.6

07/10/08 AMEND: 1859.76, 1859.83, 1859.104.3

07/10/08 AMEND: 1859.71

07/08/08 AMEND: 2271

06/26/08 AMEND: 554.2, 554.3

06/17/08 ADOPT: div. 8, ch. 112, sec. 59570

06/11/08 AMEND: 18360, 18361

06/11/08 ADOPT: 18421.7 AMEND: 18401

06/11/08 ADOPT: 18944.2 REPEAL: 18944.2

05/21/08 ADOPT: 59580

**Title 3**

10/22/08 AMEND: 3700(c)

10/20/08 AMEND: 3433(b)

10/20/08 AMEND: 3434(b)

10/17/08 AMEND: 3423(b)

10/15/08 AMEND: 3433(b)

10/14/08 AMEND: 3434(b)

10/14/08 AMEND: 3423(b)

10/01/08 AMEND: 3434(b)

09/24/08 AMEND: 810.1 REPEAL: 810

09/23/08 AMEND: 3591.20(a)

09/23/08 AMEND: 3434(b)

09/18/08 AMEND: 3591.20(a)

09/17/08 AMEND: 3435(b)

09/11/08 AMEND: 3591.20(a)

09/10/08 AMEND: 3434

09/05/08 ADOPT: 3435

09/03/08	AMEND: 6452.2	12200.13,	12200.14,	12200.16,
09/02/08	AMEND: 3433(b)	12200.17,	12200.18,	12200.20,
09/02/08	AMEND: 3591.6(a)	12200.21,	12201,	12202,
08/26/08	AMEND: 3434(b)	12203,	12203A,	12203.1,
08/25/08	AMEND: 3423(b)	12203.2,	12203.3,	12203.5,
08/18/08	AMEND: 6738, 6739	12204,	12205,	12205.1,
08/18/08	AMEND: 3434(b)	12218,	12218.1,	12218.5,
08/13/08	AMEND: 3434(b)	12218.7,	12218.11,	12220,
08/12/08	AMEND: 3406(b)	12220.3,	12220.13,	12220.14,
08/11/08	AMEND: 3406(b)	12220.16,	12220.18,	12220.20,
08/01/08	AMEND: 3589(a)	12220.20A,	12220.21,	12220.23,
08/01/08	ADOPT: 3591.22	12221,	12222,	12223,
07/28/08	AMEND: 3434(b)	12224,	12225,	12225.1,
07/25/08	AMEND: 902.9	12233,	12234,	12235,
07/24/08	ADOPT: 3591.21	12236,	12300,	12301,
07/22/08	AMEND: 3417(b)	12301.1,	12302,	12303,
07/16/08	AMEND: 3700	12304,	12305,	12306,
07/16/08	AMEND: 3406	12308,	12309,	12310,
07/14/08	AMEND: 3963	12335,	12341,	12342,
07/11/08	AMEND: 3434(b)	12343,	12344,	12345,
07/09/08	AMEND: 3434(b)	12347,	12358,	12359,
06/30/08	AMEND: 3589(a)	12370,	12400,	12401,
06/24/08	AMEND: 3963	12402,	12403,	12404,
06/24/08	AMEND: 3060.3	12405,	12460,	12463,
06/23/08	AMEND: 3591.5(a)	12466,	12550,	12552,
06/17/08	AMEND: 2751	12554,	12556,	12558,
06/16/08	AMEND: 3434(b)	12560,	12562,	12564,
06/11/08	AMEND: 3434(b)	12566,	12568,	12590
06/09/08	AMEND: 3700	08/04/08	AMEND: 1843.2	
06/04/08	AMEND: 3434(b)	07/14/08	AMEND: 8070, 8072, 8073	
05/23/08	AMEND: 3434(b)	07/10/08	AMEND: 1481, 1783, 1784	
05/23/08	AMEND: 1438.7, 1438.17	06/24/08	ADOPT: 12335, 12340, 12357 AMEND: 12342, 12343, 12344, 12345, 12358, 12359	
<b>Title 4</b>		05/23/08	ADOPT: 1843.3 AMEND: 1843.2	
10/16/08	ADOPT: 12047, 12048, 12050, 12348 AMEND: 12002	<b>Title 5</b>		
10/03/08	ADOPT: 12008 AMEND: 12122, 12200.14, 12200.20, 12202, 12203A, 12203.2, 12205.1, 12218.13, 12220.14, 12220.20, 12220.20A, 12222, 12237, 12301, 12342, 12343, 12344, 12345	10/17/08	ADOPT: 100000, 100001, 100002, 100003, 100004, 100005, 100006, 100007, 100008, 100009, 100010, 100011, 100012, 100013, 100014, 100015	
09/29/08	AMEND: 1843.2	10/14/08	ADOPT: 42729	
09/02/08	AMEND: 1850	09/10/08	AMEND: 41000	
08/25/08	ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101	09/09/08	ADOPT: 19828.3, 19837.2 AMEND: 19816, 19816.1, 19828.2, 19837.1, 19846	
08/21/08	ADOPT: 1634 AMEND: 1420	08/11/08	AMEND: 41000	
08/12/08	ADOPT: 4180, 4181	08/04/08	ADOPT: 15575, 15576, 15577, 15578	
08/08/08	AMEND: 12002, 12100, 12101, 12120, 12122, 12128, 12130, 12140, 12200, 12200.3, 12200.7, 12200.9, 12200.10A, 12200.10B, 12200.10C, 12200.11,	07/16/08	AMEND: 18272	
		06/24/08	AMEND: 80021	
		06/19/08	AMEND: 4600(I)	
		06/13/08	ADOPT: 55185, 57017 AMEND: 55180, 57001.7, 58003.4, 58770, 58771, 58774	
		06/10/08	AMEND: 30910, 30911, 30912, 30913, 30914, 30916	
		06/10/08	AMEND: 30920, 30921, 30922, 30923, 30924, 30925, 30927	
		06/09/08	ADOPT: 19828.3, 19837.2 AMEND: 19816, 19816.1, 19828.2, 19837.1, 19846	

05/28/08	ADOPT: 18085.5, 18086.1 AMEND: 18086, 18087, 18088, 18091, 18101, 18102, 18104	07/17/08	AMEND: 2498.6
05/21/08	ADOPT: 6105 AMEND: 6100, 6104	07/10/08	REPEAL: 2191
<b>Title 7</b>		07/10/08	AMEND: 2699.6611
06/10/08	ADOPT: 236.1	07/07/08	ADOPT: 2699.6602, 2699.6604 AMEND: 2699.6603, 2699.6605, 2699.6607, 2699.6608, 2699.6611, 2699.6625
<b>Title 8</b>		06/24/08	ADOPT: 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, 2232.45.5 AMEND: 2536.2
10/01/08	AMEND: 3412, 3413, 3414, 3416	06/16/08	AMEND: 2318.6, 2353.1
09/23/08	AMEND: 5155	06/02/08	ADOPT: 10.190202
09/22/08	ADOPT: 1530.1	05/27/08	AMEND: 2249.2–2249.9, 2249.12, 2249.15
09/17/08	AMEND: 1512	<b>Title 11</b>	
08/26/08	AMEND: 5168, 6775	10/16/08	AMEND: 1081
08/25/08	ADOPT: 9721.11, 9721.12, 9721.13, 9721.14, 9721.21, 9721.33 AMEND: 9720.1, 9720.2, 9721.1, 9721.2, 9721.31, 9721.32, 9722, 9722.1, 9722.2, 9723	10/14/08	AMEND: 1005
08/08/08	AMEND: 1532.1	10/02/08	AMEND: 1003, 9040, 9041, 9073(b)
08/04/08	AMEND: 3649	10/02/08	AMEND: 1081
08/04/08	AMEND: Appendix C following section 560, Appendices A, B, and C following section 1938, and section 5001	09/23/08	ADOPT: 44.3
07/30/08	AMEND: 1524	07/08/08	ADOPT: 30.14
07/18/08	AMEND: 290.0, 290.1, 291.0, 291.1, 291.2, 291.5, 292.0, 294.0, 295.0, 296.0, 296.1, 296.2, 296.3, 296.4	06/17/08	AMEND: 1005, 1007, 1008, 1080
07/18/08	AMEND: 2500.7	05/28/08	AMEND: 2000, 2001, 2010, 2020, 2030, 2037, 2038, 2050, 2051, 2052, 2053, 2060, 2070, 2071, 2072, 2140
07/17/08	AMEND: 4885, 4924, 5004	<b>Title 13</b>	
07/17/08	AMEND: 1604.24, 1604.26	10/20/08	ADOPT: 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14, 346.16
07/14/08	AMEND: Appendix B following 1541.1	10/07/08	AMEND: 935
06/30/08	ADOPT: 4300.1 AMEND: 4297, 4300	10/02/08	AMEND: 423.00
06/06/08	AMEND: 1710(k)(2)	10/02/08	AMEND: 15.00, 15.03
<b>Title 9</b>		09/08/08	AMEND: 2449
07/11/08	ADOPT: 1810.207.5, 1810.220.5 AMEND: 1830.220	08/29/08	ADOPT: 2660(a)(0.5), 2260(a)(0.7), 2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5), 2260(a)(10.5), 2260(a)(10.7), 2260(a)(19.7), 2260(a)(19.8), 2260(a)(23.5), 2260(a)(23.7), 2260(a)(37), 2260(a)(38), 2260(a)(39), 2262.3(d), 2264.2(a)(3), 2264.2(b)(5), 2264.2(d), 2265(c)(4), 2265.1, 2265.5, 2266(b)(3), 2266(b)(4), 2266(b)(5) AMEND: 2261, 2262, 2262.3, 2262.4, 2262.5, 2262.9, 2263, 2263.7, 2264.2, 2265, 2266, 2266.5, 2270, 2271, 2273
07/02/08	AMEND: 9515(d), 10522(b)	08/13/08	ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1
<b>Title 10</b>		07/15/08	AMEND: 440.04
09/22/08	AMEND: 2699.6500, 2699.6803, 2699.6805	06/16/08	ADOPT: 156.01
09/15/08	AMEND: 2699.6619, 2699.6700, 2699.6703, 2699.6705, 2699.6709, 2699.6711, 2699.6713, 2699.6715, 2699.6717, 2699.6721, 2699.6723, 2699.6725	06/16/08	AMEND: 1961, 1965
09/11/08	AMEND: 2330.1	06/10/08	AMEND: 2222
08/15/08	ADOPT: 2844 AMEND: 2840, 2842	06/02/08	AMEND: 1141
08/14/08	AMEND: 2699.100, 2699.201, 2699.205, 2699.207, 2699.209, 2699.400	<b>Title 13, 17</b>	
08/04/08	AMEND: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117 REPEAL: 5119	10/20/08	ADOPT: 2299.5, 93118.5
07/30/08	AMEND: 2498.6	07/02/08	AMEND: 2299.1, 93118
07/24/08	AMEND: 2498.4.9		
07/23/08	AMEND: 2498.4.9		
07/23/08	AMEND: 2498.4.9		
07/21/08	ADOPT: 2330.1, 2330.3, 2330.4, 2330.5		

**Title 14**

10/22/08 AMEND: 1052.4  
 10/21/08 AMEND: 15387 Appendix C  
 10/09/08 AMEND: 791, 791.7, 795  
 09/22/08 AMEND: 4900 REPEAL: 4901, 4902, 4903, 4904  
 09/15/08 AMEND: 502  
 09/11/08 AMEND: 10310, 10360, 10810, 10820, Appendix D, Appendix F  
 09/09/08 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5, 17987.6  
 09/04/08 AMEND: 670.2  
 08/27/08 AMEND: 300  
 08/25/08 ADOPT: 27.32 AMEND: 27.20(f), 27.25, 27.30, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58  
 08/18/08 AMEND: 749.3  
 08/14/08 ADOPT: 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965  
 08/12/08 ADOPT: 124  
 08/11/08 AMEND: 503  
 08/06/08 AMEND: 815.05, 818.02, 825.05, 827.02  
 07/28/08 AMEND: 702  
 07/23/08 AMEND: 7.50  
 07/15/08 ADOPT: 4860  
 07/08/08 ADOPT: 124.1 AMEND: 122, 125, 149.1, 150, 150.02, 150.03, 150.05, 163, 163.5, 164, 174, 180.3  
 07/02/08 AMEND: 7.50  
 07/01/08 AMEND: 27.80  
 06/30/08 AMEND: 120.7  
 06/23/08 AMEND: 18660.23, 18660.24, 18660.25, 18660.33, 18660.34  
 06/20/08 AMEND: 360, 361, 362, 363, 364, 551, 708, 712  
 06/18/08 ADOPT: 355  
 06/16/08 AMEND: 10602, 10800

**Title 15**

10/15/08 ADOPT: 3999.6  
 09/15/08 ADOPT: 3269  
 09/03/08 AMEND: 2253  
 08/29/08 AMEND: 3000, 3261.1, 3261.2, 3261.4, 3261.5, 3261.7, 3267  
 08/04/08 AMEND: 2041  
 08/04/08 AMEND: 3000, 3005, 3006, 3008, 3009, 3011, 3012, 3013, 3015, 3016, 3290, 3310, 3313, 3314, 3315, 3317, 3318, 3320, 3323, 3327, 3328  
 07/30/08 ADOPT: 3503, 3505, 3506, 3507, 3508, 3509, 3510, 3511, new Article 2 and title, 3520, 3521, 3521.1, 3521.2, 3521.3,

3521.4, 3521.5, 3521.6, 3522, 3523, 3524, 3525, 3526, 3527, new Article 3 and title, 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3549, new Article 4 and title, 3560, 3561, 3562, 3563, 3564, new Article 5 and title, 3570, 3571, new Article 6 and title, 3580, 3581, 3582, new Article 7 and title, new Article 8 and title, new Article 9 and title, new Article 10 and title, new Article 12 and title, 3640, new Article 13 and title, 3650, 3651, 3652, 3652.1, 3653, 3654, new Article 14 and title, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, new Article 15 and title, 3720, 3721, 3721.1, 3722, 3723, new Article 16 untitled, 3730, new Article 17 and title, new Article 18 and title, 3750, 3751, 3752, 3753, 3754, 3755, 3756, new Article 19 and title, 3760, 3761, 3762, 3763, 3764, 3765, 3766, new Article 20 and title, 3770, 3771, and 3772. AMEND: 3604, 3605, 3605.5, 3701.1, 3705, 3706, 3801, 3802, renumber old Article 2 with title, and 3815.

07/17/08 ADOPT: 3134.1 AMEND: 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147

07/14/08 ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792

07/08/08 ADOPT: 3334 AMEND: 3000

06/23/08 ADOPT: 2275

06/04/08 AMEND: 3190, 3191

05/23/08 ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461

**Title 16**

10/17/08 ADOPT: 1399.610, 1399.612 AMEND: 1399.502

10/07/08 AMEND: 832.47

10/02/08 AMEND: 3351.2

09/29/08 AMEND: 2522, 2524, 2579, 2579.10 REPEAL: 2522.5, 2579.1

09/22/08 AMEND: 4154, 4155

09/19/08 AMEND: 11.5, 12, 12.5, 37, 87.1

09/10/08 ADOPT: 1028.2, 1028.3, 1028.4, 1028.5 AMEND: 1021

08/27/08 AMEND: 2250 REPEAL: 2274, 2277

08/25/08 AMEND: 1399.480, 1399.481, 1399.482, 1399.483, 1399.484,

	1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1	08/07/08	ADOPT: 1980.00, 1980.01, 1980.02, 1980.03, 1980.04, 1980.05, 1980.06, 1980.07, 1990.00, 1990.01, 1990.02, 1990.03, 1990.04, 1990.05, 1990.06, 1990.07, 1990.08, 1990.09, 1990.10, 1990.11, 1990.12, 1990.13
08/15/08	AMEND: 1361		
08/13/08	AMEND: 3394.6		
08/12/08	AMEND: 3394.4		
08/07/08	AMEND: 4161		
07/30/08	AMEND: 2649	06/06/08	AMEND: 200, 203, 204, 206, 207, 208, 209, 211, 212, 214, 215, 216, 217
07/23/08	AMEND: 1399.152.2, 1399.153, 1399.153.3		
07/18/08	AMEND: 134 REPEAL: 135	<b>Title 21</b>	
07/09/08	ADOPT: 1984	06/30/08	ADOPT: 111, 112, 113, 114, 121, 131, 132, 133, 134, 135, 136, 141, 151, 152, 153
07/08/08	AMEND: 1399.540		
07/03/08	AMEND: 1568	<b>Title 22</b>	
07/02/08	AMEND: 390, 390.1, 390.3, 390.4, 390.5, 390.6 REPEAL: 390.2	10/15/08	AMEND: 2051-3
06/30/08	ADOPT: 119.7	09/26/08	AMEND: 3258-1, 3267-1, 3267-2
06/26/08	AMEND: 109, 116	08/07/08	AMEND: 51098.5, 51202.5, 51309.5, 51503.3
06/17/08	ADOPT: 4580		
06/16/08	ADOPT: 4400, 4402, 4404, 4406, 4420, 4422, 4424, 4426, 4428, 4500, 4520, 4522, 4540, 4542, 4560, 4562	06/26/08	AMEND: 100140, 100141, 100163, 100172, 100174
06/11/08	REPEAL: 1399.664	06/23/08	AMEND: 12805
06/04/08	AMEND: 931	06/17/08	ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040
05/21/08	AMEND: 4141		
<b>Title 17</b>			
09/24/08	AMEND: 52082, 56103, 56104, 58670		
09/18/08	ADOPT: 94800, 94801, 94802, 94803, 94804, 94805, 94806, 94807, 94808, 94809, 94810		
09/05/08	ADOPT: 98100 REPEAL: 96100		
08/06/08	AMEND: 94006		
07/14/08	AMEND: 57310, 57332		
07/14/08	ADOPT: 100120		
07/08/08	AMEND: 95005		
07/02/08	AMEND: 2299.1, 93118		
06/12/08	ADOPT: 94016, 94168 AMEND: 94010, 94011		
05/30/08	AMEND: 100080, 100085, 100090, 100100		
<b>Title 18</b>			
09/24/08	AMEND: 1574		
09/24/08	AMEND: 1599		
08/11/08	AMEND: 1807, 1828		
08/05/08	AMEND: 3000		
07/16/08	AMEND: 5216, 5310, 5311, 5326.4, 5326.6, 5333, 5333.4, 5333.6, 5523.4		
06/23/08	AMEND: 19503		
06/10/08	ADOPT: 2558, 2559, 2559.1, 2559.3, 2559.5		
06/04/08	AMEND: 23038(b)-2, 23038(b)-3		
<b>Title 19</b>			
09/24/08	AMEND: 560		
09/24/08	AMEND: 906.3		

**Title 22, MPP**

07/09/08 ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405  
07/09/08 ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405  
06/30/08 AMEND: 63-300, 63-504, 63-505, 63-601

**Title 22, 27**

07/07/08 AMEND: Title 22, 67450.11; Title 27, Div. 3, subd. 1, Chapter 4C. and Chapter 6

**Title 23**

10/22/08 ADOPT: 3989.7  
10/14/08 AMEND: 3939.19  
10/06/08 AMEND: 3939.20  
09/17/08 ADOPT: 3919.4  
07/01/08 AMEND: 3935  
06/27/08 ADOPT: 3949.5  
06/26/08 ADOPT: 2918

**Title 25**

10/08/08 AMEND: 4000, 4002, 4004, 4010, 4017, 4020, 4024, 4025, 4030, 4032, 4033, 4034.5, 4040, 4041, 4049.1, 4049.3, 4049.5, 4049.7, 4049.9, Appendix A  
REPEAL: 4021, 4031.5, 4047, 4047.3, 4047.6, 4550, 4560, 4570, 4580, 4600, 4603, 4605, 4619, 4624, 4626, 4665, 4670, 4680, 4800, Appendix RV-P-1  
08/29/08 ADOPT: 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214, 4216  
07/14/08 AMEND: 2002, 4004, 5002, 5511

**Title 27**

09/05/08 AMEND: 25601  
08/08/08 AMEND: 25705(b)  
06/17/08 ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703,

25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040

**Title 28**

09/15/08 ADOPT: 1300.71.39

**Title MPP**

09/29/08 ADOPT: 14-611, 14-915, 14-916  
AMEND: 14-610  
09/18/08 AMEND: DSS MPP 63-102, 63-504  
06/30/08 AMEND: 63-300, 63-504, 63-505, 63-601  
06/30/08 AMEND: 42-721, 42-780, 44-303, 44-307, 44-318, 82-812  
06/26/08 ADOPT: 40-037, 70-101, 70-102, 70-103, 70-104, 70-105 AMEND: 30-755, 30-770, 40-105, 42-430, 42-431, 42-433, 42-711, 49-020, 49-030, 49-060, 63-403, 69-201, 69-202, 69-205  
06/04/08 AMEND: 63-301